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In The

Supreme Court of the United States

WILLIAM F. WENDT, Jr.,
Petitioner, Pro Se

v.

Justices of the Supreme Court of the United States
WILLIAM REHNQUIST, JOHN PAUL STEVENS,
SANDRA O'CONNOR, ANTHONY KENNEDY, ANTONIN
SCALIA, CLARENCE THOMAS, DAVID SOUTER,
RUTH BADER GINSBURG, and STEPHEN BREYER
United States Court of Appeals Judges, Seventh Circuit,
RICHARD POSNER, ILANA DIAMOND ROVNER, ANN
CLAIRE WILLIAMS, FRANK EASTERBOOK, WILLIAM
BAUER, KENNETH RIPPLE, JOHN COFFEY,
MICHAEL KANNE, DIANE WOOD, TERENCE EVANS,
DANIEL MANION, and JOEL FLAUM
Federal District Court Judges for the
Northern District of Illinois, Eastern Division,
JAMES HOLDERMAN and WAYNE ANDERSEN
Federal prosecutors SAMUEL BROOKS,
PATRICK FITZGERALD, and THEODORE OLSON,
Respondents

On Petition for Writ of Certiorari
To the Seventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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143 11

ISSUES PRESENTED

1. Whether this case still requires normal adversary proceedings, unless

a) the right to a hearing on the merits of a claim over which the court has jurisdiction is no longer the essence of our judicial system,

b) federal judges can act as defendants and adjudicators both without even acknowledging the first,

c) federal judges can act as their own ombudsmen and save themselves the trouble of invoking judicial immunity or even claiming a judicial act, and

d) this Court simply does not believe its own holdings on judicial immunity being a protection for the public, not the judges;

whether the federal courts have any defense for the persistent practice in Wendt's litigation of ignoring key points of law that would require a different result. (p3)

2. Whether federal courts presume jurisdiction when failing to mention key points of law requiring a different result, including jurisdictional challenges. (p6)

3. Whether a trial court dismissal, attacking the complaint based on matters of record only as "factually frivolous," is utterly baseless and contradicts its own authority by not accepting allegations in the complaint as true. (p8)

4. Whether a *sua sponte* trial court dismissal without notice is void. (p9)

5. Whether the trial court judge is disqualified for being subject to the coercive influence of the federal appellate judge defendants, and for using reprehensible tactics as a prosecutor in a disreputable criminal case. (p11)

6. Whether the summary affirmance is void, holding only that the issues which *"could be raised"* are *"insubstantial,"* those being in the judges' own defense, not the issues already raised but not ruled upon. (p12)

7. Whether there is any finality in a void trial court ruling and a void appeal not ruling upon any issue. (p14)

8. Whether the meaning of "reason" needs to be clarified. (p16)

9. Whether leaving the proceedings in their present state would leave the members of this Court and the appellate court liable under 18 USC 201, 208. (p16)

10. Whether the timid failure to rule on issues is a badge of a coerced court; whether this judge-created issue must be confronted, at whatever personal or institutional risk. (p18)

11. Whether the the 7th Circuit's failure to impose sanctions for relitigation, even when baited on rehearing with Homola v. McNamara, 59 F.3d 647 (7th Cir 1995), is an attempt to keep this matter below the radar. (p19)

12. Whether the Constitution is merely what the judges THINK it is. (p21)

13. Whether federal judges need to be deterred from violating constitutional rights, in particular the right to sue. (p24)

14. Whether the only way to deal with judges issuing void rulings is to keep suing them. (27)

15. Whether the courts have a duty to protect the constitutional right to enter the federal courthouse without having to show a photo ID requiring a Social Security number; whether such a First Amendment violation demands strict scrutiny by this Court. (p28)

16. Whether this appeal, if in form from a final order, should be considered an involuntary interlocutory appeal; whether Wendt should be relieved of having to pay for another appeal or Supreme Court petition at the conclusion of reinstated trial court proceedings. (p29)

17. Whether summary judgment should be granted if the defendants have no defense. (p30)

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CITATIONS

1. The orders of the 7th Circuit Court of Appeals (03-1403) and of the District Court for the Northern District of Illinois (02 C 7779) are unpublished.

JURISDICTIONAL STATEMENT

2. The panel order was issued on May 6, 2003. The order denying the petition for rehearing was issued July 3, 3003, an amended order July 7, 2003.

3. This Court has jurisdiction of this matter under 28 United States Code 1254(1) under this petition, and 28 United States Code 1254(2), in that the 7th Circuit constructively certified it by failing to discuss any issue.

CONSTITUTIONAL PROVISIONS AND STATUTES

4. Constitution of the United States, Article III, §§1, 2; Fifth Amendment, Due Process clause; the Thirteenth Amendment as enforced by the Civil Rights Acts of 1866 and 1870; and the fundamental constitutional right of access to the courts (Marbury v. Madison, 5 U.S. 137, 161; Bounds v. Smith, 430 U.S. 817, 822, 828; Jones v. Clinton, 72 F.3d 1354, 1360, 1365), being more than simply presenting a paper subject to dismissal for convenience of court and litigants (Bonner v. City of Pritchard, Ala., 661 F.2d 1206, 1211)

STATEMENT OF THE CASE

5. On October 29, 2002 Wendt filed a 28 page complaint (64a) against the judges in the two federal cases he has taken to this Court in the past three years (00-325; 01-1613) and against the government attorneys in the second case. Jurisdiction was invoked under 28 USC 1331. The complaint is little except the arguments Wendt raised in both cases; the injury is the disregard by the federal courts of the plainly cited law that would have required different results. The legal issues are whether this disregard is a legislative, not a judicial act, whether it is denial of due process to the point of usurpation, whether it constitutes badges and incidents of slavery as a denial of the rights to sue, to be a party, and to the protection of laws and proceedings, and denial of access to the courts. The attorneys in the second case are charged with conspiracy with the judges to commit these wrongs.

6. Judgment was entered *sua sponte* in the trial court by the assigned judge, Charles Kocoras, November 22, 2002, with no defendant before the court, without prior notice of any sort to the plaintiff, and with no filing before the court beyond the complaint. The only attack on the complaint is that is "factually frivolous." (2a)

7. Wendt filed a motion to alter or amend judgment and to disqualify the judge on December 9, 2002, arguing the judge was disqualified and that the *sua sponte* dismissal was totally improper.

8. The motion was denied in open court on December 18, 2002. When pressed for a definition of "factually frivolous," the trial court only told Wendt to take the case two floors up to the appellate court. (4a, 5a)

9. The notice of appeal and docketing statement were filed on February 13, 2003.

10. Filed on appeal, March 25, 2003, were:

1) the PETITION FOR EN BANC CONSIDERATION WITH DISCLOSURE OF JUDGES' ETHICS STATEMENTS, on importance of the judicial process,

2) the MOTION FOR PRIORITY OVER CASES ENFORCING UNCONSTITUTIONAL, OVERLY HAMILTONIAN LAWS, Wendt's access to the courts restricted by the case overload resulting from their failure to keep federal power within constitutional limits (29a),

3) the MOTION FOR ADJUDICATION IN SPIRIT OF PATRIOTIC SELF-SACRIFICE, regarding coercive influences on and financial interests of federal judges, re constitutional deviations above (10a), and

4) the MOTION FOR NORMAL ACCESS TO THE COURT, so Wendt can exercise his constitutional right to enter the federal courthouse without having to show a photo ID with a Social Security number (52a).

11. The brief was filed April 2, 2003, seeking a remand on basis of Circuit Rule 50 for not giving a reason, retention of jurisdiction for an appeal in the normal course of procedings without paying another fee, and disqualification of the trial judge.

12. The motions and petition were denied without explanation April 3, 2003. (8a)

13. The 7th Circuit issued a summary affirmance on May 6, 2003. (1a)

14. The petition for rehearing en banc was filed June 17, 2003. (excerpts, 56a)

15. The petition for rehearing en banc was denied without explanation with judges named as defendants disqualifying themselves on July 3, 2003 (7a), by an amended order July 7, 2003 without explanation and without judges disqualifying themselves (6a).

REASONS FOR GRANTING THE WRIT

A. Judicial Act, Judicial Act, Wherefore Art Thou?

16. *"... The right to a hearing on the merits of a claim over which the court has jurisdiction is of the essence of our judicial system, and the judge's feeling that the case is probably frivolous does not justify by-passing that right. Appellant is entitled to have process issued and served, and to be heard."* Armstrong v. Rushing, 352 F.2d 836, 837 (1965), at least in the Ninth Circuit, if not in the Seventh. It is an essence notable for its complete absence so far in this matter, never mind it is now before the highest court in the land. There is nothing in any order, on trial or review, that addresses any merit of the claim or jurisdiction of the court. The trial court issued only self-contradiction and legal invective, if at least realizing a question of legitimacy (5a). The appellate court issued only subjective impressions, not on issues that were raised, but only on issues that could be raised. Its only unkited citation, Taylor v. City of New Albany, 979 F.2d 87 (7th Cir. 1992), requires an unusual reliance on the petition for rehearing. On rehearing, however, the active members of the court first disqualified themselves without explanation (7a), then requalified themselves again without explanation (6a), the denial both times being without explanation. The defendants, as such, have yet to even make an appearance, far preferring, to all outward appearances, the role of adjudicator. So far the defendants have yet to contest anything, whether as defendants or adjudicators.

17. The lower court orders amount to nothing but, *"We don't want to be bothered,"* that being far from a

judicial act. *"Article III speaks of the 'judicial power' of this Court, which embraces application of principles of law and equity to facts, distilled by hearings or by stipulations."* Vermont v. New York, 417 U.S. 270, 276. Or, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 477, *"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist..."* That is exactly what has not happened in this case, and what will not happen without action by this Court.

18. If this pathetic state of affairs proves anything it is that that judges have fools for clients when they act as their own ombudsmen. See Homola v. McNamara, 59 F.3d 647, 651, (7th Cir 1995), on the conditions of judicial immunity,*"...The judge must be acting as a judge, rather than as an ombudsman or administrative officer. Forrester v. White, 484 U.S. 222"* Do federal judges get to act as their own ombudsmen, even when deriding their own side of the case? (¶¶38-43) Wendt is a firm believer in the presumption of innocence, but to put it beyond challenge, beyond the normal burden of the plaintiff to prove his case, by self-interested but unadmitted abuse of public power, is a bald usurpation of the judicial process. The lower court rulings are valid only on the common-law fiction "the King can do no wrong," rejected at the birth of the Republic, Clinton v. Jones, 520 U.S. 681, 697 n24, or on the notion that the defendants are above the law, again contrary to American principles, Davis v. Passman, 442 U.S. 228, 246, or if American courts, including this one, can update, *"L'etat, c'est moi."*

19. *"We do not sit like a kadi under a tree dispensing justice according to considerations of individual expediency,"* Terminiello v. Chicago, 337 U.S. 1, 11 (1949), quoted in Kurland, Mr. Justice Frankfurter and the Constitution, frontspiece. That was then and this is now. That was Supreme Court justice Felix Frankfurter, dissenting, and this is the 7th Circuit, which in so many words exalts the immediate expediency of its members over even the lawyerly imagination, or, for that matter, their long-term expediency. If, in his short life, Wendt

has learned not to underestimate the lawyerly imagination, still, he has learned it has definite limits. For all the lawyerly loquacity in some matters, on others the less said the better, indeed, in a few, best nothing at all, at least if they think they can get away with it.

20. *"...The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body,"* said Federalist 78, on such excess of courtly pleasure. Marbury v. Madison, 1 Cranch 137 (in its little observed bicentennial), held this is a government of laws, not men, that it is the emphatic duty of the courts to say what the law is, that the essence of civil liberty is the ability of the citizen to claim protection of the law, and that there is no Constitution if the courts do not rule on it, but today Marshall's limits on power are superseded by Oliver Wendell Holmes' deference to power (56a). The judicial system is supposed to be founded on reason, not fiat, Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000), but not in Wendt's litigation. When will someone commit a judicial act in one of his cases, that is, apply law to fact? For that matter, when will anyone even claim to have committed a judicial act? What, pray tell, is the problem with claiming to have committed a judicial act, thus to invoke the ironclad defense of judicial immunity? That, stated different ways, is the essential question of the complaint, that no judicial act was committed in Wendt's two previous cases. That is the essential question in this case, so far, for which he is still seeking a less drastic remedy than another lawsuit.

21. What if this Court lets the judges avoid normal proceedings? Do the federal courts have any defense for rulings ignoring points of law that would demand a different result? If it is nullification when juries do that, what is it when judges do it? (94a) Such an informal immunity would make a liar out of this Court for everything it has said on judicial immunity protecting the public, not the judges. Pierson v. Ray, 386 U.S. 547. 554. This is indeed the Saddam Hussein approach,

"Don't talk to me about the law; the law is anything I write on a scrap of paper." (91a, 96a-97a)

B. Presumed Jurisdiction

22. Jurisdiction is not presumed in the federal courts, at least in theory. The plaintiff has the burden of establishing jurisdiction, according to defendant Scalia, writing for a unanimous court in Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377:

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, see Willy v. Coastal Corp., 503 U.S. 131, 136-137... (1992); Bender v. Williamsport Area School Dist., 475 U.S. 534, 541... (1986), which is not to be expanded by judicial decree, American Fire & Casualty Co. v. Finn, 341 U.S. 6 ...(1951). It is to be presumed that a cause lies outside this limited jurisdiction, Turner v. Bank of North America, 4 U.S. (Dall.) 8, 11... (1799), and the burden of establishing the contrary rests upon the party asserting jurisdiction, McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 182-183... (1936)."

23. That is not entirely the plaintiff's burden, however. The court has its burden of staying within jurisdiction, regardless of any action by the parties:

"...Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.' (U.S. cite) 'On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it.' (U.S. cite) The requirement that jurisdiction be established as a threshold matter 'springs from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.' (U.S. cite)" Steel Co. v. Ctzns for Better Env., 523 U.S. 83, 94-95

24. A prerequsite to that very same jurisdiction is a ruling within the power of the court. Cooper v. Rey-

nolds, 10 Wall. (77 U.S.) 308, 316, National Malleable v. Goodlet, 105 F.2d 8, 15, Briley v. State of Cal., 564 F.2d 849, 857. If the point is yet little developed, its importance ought to be apparent from the question: What if courts had an unlimited power to issue any sort of ruling they wish? This point forms the bone of contention here, as much ignored by the courts as emphasized by Wendt. The complaint is precious little but a record of rulings in his two previous cases beyond the power of the court and repeated but ignored jurisdictional challenges to them.

25. Once upon a time judges felt required to rule on questions properly presented, even if disqualified. From United States v. Will, 449 U.S. 200, 214:

"[I]t is well established that actual disqualification of a member of a court of last resort will not excuse such member from performing his official duty if failure to do so would result in a denial of a litigant's constitutional right to have a question, properly presented to such court, properly adjudicated." State ex rel. Mitchell v. Sage Stores, 157 Kan. 622, 629, 143 P.2d 652, 656

And, furthermore, at 215,"... *The plaintiff was entitled by law to invoke our decision on the question as respects his own compensation...."* Evans v. Gore, 253 U.S. 245, 247-248, the plaintiff a judge, in theory, at least, no more entitled to sue and "require" a ruling than Wendt. Duke Power Co. v. Greenwood County, S.C., 10 F. Supp. 854, 864, a fine statement of old school, pre-"emergency power," pre-"spend ourselves rich" law (20a-21a, 32a), was also "old school" enough to say:

"... I conceive it to be a duty from which I may not escape to determine the constitutional issues thus presented, and upon which the plaintiffs have invoked, and have a right to require, my conclusions..."

26. Wendt might have been rushing things in his previous case (00-325), expecting the federal courts to hold state court decisions to *Rooker-Feldman* criteria before expecting them to hold their own to the same. Rooker v. Fidelity Trust Co., 263 U.S. 413, 415, held:

"It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit

court had jurisdiction of both the subject matter and the parties; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs, 191 Ind. 141. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction..."

27. Rooker, 416, also responded to the allegation of a void decision. No such thing can be said about the orders so far in this case, nor, for that matter, about the decisions in Wendt's two previous cases.

28. There is nothing resembling a jurisdictional ruling in this case so far, notwithstanding, again, the court's duty and Wendt's repeated challenges. Thus, contrary to supposedly ironclad law, the courts presume jurisdiction. Belaboring the obvious, yet again, why have law at all, jurisdictional or otherwise, if the courts simply ignore it? Law is defined to be a rule of action, Federalist 62, not a recommendation, Federalist 15.

C. Dismissal Self-Contradictory and Baseless

29. The sua sponte dismissal (2a) cited Ledford v. Sullivan, 105 F.3d 354, 356 (7th Cir. 1997), that sua sponte 12(b)(6) dismissals are allowed as long as a *"sufficient basis for the court's action is evident from the plaintiff's pleading,"* just before deeming it *"factually frivolous."* What basis is evident from the pleading is not indicated, but nothing fitting a legal definition. Ledford continued, *"We accept as true all facts alleged in the complaint and draw all reasonable inferences from them in the plaintiff's favor,"* a task obviously unperformed, one obviously incompatible with dismissing matters of record as factually frivolous. The next sentence requires reversal,*"We will affirm the dismissal of a complaint if 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations,'"* if, indeed, relief can be granted against federal judges, who, so far, have the *de facto* if not *de jure* power not to be bothered with litigation against them.

30. The only attack on the complaint is the legal invective, *"factually frivolous."* Wendt pointed out in the motion to alter or amend and in the brief, one) that the facts alleged in the complaint are all matters of record, easily checked as such, and, two) as argued in both:

"19. If the complaint is hardly described in complimentary terms, the only direct attack upon it is the final sentence, 'The plaintiff's complaint is factually frivolous,' *with no further elaboration. Not only a definition of the term* 'factually frivolous' *but a distinction from the companion term 'legally frivolous' are to be found in* Stotts v. Salas, *938 F.Supp. 663, 666:*

'... A district court may review the complaint and dismiss sua sponte those claims premised on meritless legal theories or that clearly lack any factual basis. Denton v. Hernandez, *504 U.S. 25, 26-27 (1992)...*

'An in forma pauperis *complaint is legally frivolous if it 'embraces... [an] inarguable legal conclusion.'* Neitzke v. Williams, *490 U.S. 319, 325 ... (1989). A complaint is factually frivolous when 'the facts rise to the level of the irrational or the wholly incredible, whether or not there are judically noticeable facts available to contradict them.'* Denton, *504 at 33....'*

31. When asked how the definition of "factually frivolous" could apply to matters of record, the trial court only said the appellate court is two floors up. (5a)

D. *Sua Sponte* Dismissal Without Notice Void

32. Tyler v. City of Omaha, 780 F.Supp. 1266 (1991) is a law review article of sorts on permissible and impermissable sua sponte dismissals. If permissable without notice when there is not a shred of a valid claim, 1270, otherwise notice is required, 1269-1270. They are strongly disfavored, however, *"because the district court is cast in the role of a proponent for the defense, rather than an independent entity, and because such dismissal may lead to the 'wasteful shuttling of the lawsuit between the district and appellate courts.'"* (three 8th Cir. cites) A subsequent 8th Cir. case, Hake v. Clarke, 91 F.3d 1129, 1132, held frivolousness review of a paid case unauthorized, also initial review of pro se cases under Rule 12(b)(6)

prior to service and responsive pleadings. *"The Rules contemplated a litigant-directed process at the initial stages, but the procedure at issue in this case interjected a review by a judicial officer into the process." id.* at 1131.

33. Even a *Bivens* action against a judge (as this matter is) over an admitted judicial act (as this matter is not) was accorded not only notice before dismissal, Stephens v. Herring, 827 F.Supp. 359, 365 n.1, but an extensive discussion of judicial immunity before dismissal. The lower court orders do not even mention immunity, if the dismissal seems to suggest the mere thought of suing judges and prosecutors is outlandish. The complaint pointedly framed the causes of action as clearly beyond judicial power, however, to which immunity does not apply. Were Wendt notified of possible dismissal, he could have set forth reasons why immunity does not apply in this matter. In the U of I case (00-325) he offered extensive positions on official immunities. In both cases he made extensive, strenuous, repeated objections to actions beyond the authority of the court, often threatening a lawsuit. Indeed, the facts alleged in the complaint are precious little but that, and to those questions being ignored. The purpose of official immunities, by numerous authorities, is not to protect the official but the official function. (¶42) The dismissal making no mention whether the function was performed, strenuous allegations to the contrary, it is easily dismissed as protection of officials, leaving the function that much more endangered. That 1) courts have a threshold responsibility to explain their jurisdiction, and 2) that lawsuits against judges can get very awkward, Stephens, 364, militate against leaving such questions unresolved here.

34. Federal Election Com'n. v. Al Salvi for Senate, 205 F.3d 1015 (7th Cir 2000), 1019, held a sua sponte dismissal without warning to be an abuse of discretion, but not a deprivation of due process rendering the judgment void, in a case *"not dismissed entirely out of the blue, over an issue the Commission was never apprized of."* The present dismissal (2a) was done completely out of the blue on an issue Wendt was never apprized of. Thus

it is void and even actionable, on this and other grounds, if this Court does nothing about it.

35. Sua sponte dismissals must be done with caution, Byrne v. Nezhat, 261 F.3d 1075 (11th Cir. 2001), 1127 n99, even when required in a case of egregious "shotgun pleadings" on both sides abusing the judical process and wasting judicial resources. Overturning a dismissal without notice, Lee v. City of Los Angeles, 250 F.3d 668 (9th Cir 2001), 683 n7, held the district court in error for a sua sponte dismissal without notice and without written findings. Chute v. Walker, 281 F.3d 314 (1st Cir 2002), held they are proper only for allegations that are patently meritless and beyond all hope of redemption, 319. There is no caution in this egregious dismissal, no notice, no defendant before the court, and nothing close to a candid discussion of the complaint; the written findings fit the definition in question, delusional or irrational.

E. Trial Judge Disqualified

36. Instead of a *sua sponte* dismissal there should have been a *sua sponte* disqualification. Obvious on the face of the pleading (64a), and as even the dismissal notes in part (2a), the defendants include two judges of the same District, twelve judges of the 7th Circuit (overseeing the District), the U.S. Attorney for the District and an assistant. The close relationships to any other judge of the same District should be obvious enough. Whether or not the relationships to the judges of the 7th Circuit judges are that close, the appellate judges form the Judicial Council which has the coercive power under 28 U.S.C. 167, 322 to strip a trial judge of his duties, over which even the Supreme Court has very limited power of review. Chandler v. Judicial Council of the Tenth Circuit, 398 U.S. 74. The process of a coerced court is void. Moore v. Dempsey, 261 U.S. 86. The issue of a coerced court was raised in the complaint (66a,97a,99a), to which neither court nor counsel has yet responded.

37. This particular trial judge, Charles Kocoras, has yet additional reason to disqualify himself, having been a prosecutor of Stanley Robinson. Robinson, according to his book, The Badge They Are Trying to Bury,

was a Chicago policeman who discovered that drug informants were not the little fish used to nail the big fish, but the big fish wiping out the competition. One of them was William O'Neal, who also set up the infamous, fatal Black Panther raid of December 1969 and who was the principal witness against Robinson in a federal criminal case. Robinson accuses Kocoras of threatening one witness with suspension of parole and reproduces a trial transcript of O'Neal admitting to rehearsing testimony with Kocoras dozens of times. This may well have escaped FBI scrutiny in Kocoras' judicial nomination, in that an FBI agent was directing O'Neal's activities. This is not the usual cause for disqualification, but drug enforcement is now much more recognized as a fertile source of corruption. Too, recent FBI scandals have rocked confidence in that agency. If the complaint (66a), ¶5, only noted, *"...State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988), almost 90 pages of court opinion, exhibits, and concurrence on the sandbagging by federal agents of former Federal District Judge Harry Claiborne, the first federal judge in recent years to be impeached,"* the agents were FBI agents. The trial judge cannot continue in this matter without further raising questions of the integrity of the federal judiciary and furnishing abundant grist for conspiracy theories. If motions to disqualify are generally not allowed after a substantive ruling, an exception has to be made when an unannounced ruling such as this jumps the gun.

F. Judges' Own Case Insubstantial?

38. In the previous case (01-1613, 20a, ¶8) there was a technical fig leaf for saying issues could not be raised, that underlying issues could not be raised on an appeal of a Rule 60(b) order, however easily stripped on further analysis (01-1613, 24aff, ¶3ff). In this case (1a) there is not even a fig leaf. Why can't issues be raised? Or the facts alleged accepted as true, at least for discussion? In this and his previous case, Wendt had already filed briefs and other papers raising issues, contrary to Taylor, which only denied a motion to proceed *in forma pauperis*. Why the elliptical phasing to issues that

COULD be raised? If unstated, the circumstances more than suggest the defendants would rather wear two hats at once, defendant and adjudicator. Or maybe they just want to go on deciding cases without mentioning the unfavored party's key points, whether or not that makes a mockery of the legal system and reduces law to favor.

39. If Wendt has to play Philadelphia lawyer, the order only refers to issues which COULD be raised, not to those already raised. The issues ALREADY raised are quite substantial enough, he trusts, even if neither the appellate nor the trial orders refer to them. Not that he anticipates raising any more, the issues which COULD be raised are those in defense, the very same issues derided by the order as insubstantial. If indeed the issues that COULD be raised in defense are insubstantial, Wendt should win the case, not lose. Not, however, that Wendt wishes to deprive the other side of its day in court, if indeed it has issues to be raised. If only for the sake of due process and avoiding yet another void, forever relitigable decision, Wendt definitely prefers they be ruled insubstantial after they are raised, not before.

40. It is Alice-in-Wonderland, in any event, that any side should win a case when it deems its own issues insubstantial before they are raised, before it has even entered an appearance. Further briefing not desired? Whose briefing? The other side's? The judge's very own? The judge does not want to present her side of the case? The same case she presumes to decide in her favor? Her side, and her colleagues', is insubstantial? Do federal judges get to act as their own ombudsmen, even when deriding their own side of the case?

41. That is, of course, if Wendt's brief has not already raised the usual, usually ironclad, defense of judicial immunity and showed it insubstantial here:

"22. The purported dismissal (Doc. 2, App.1) is an application of a technical excuse to an obviously biased personal impression. It is far from an application of law to fact and thus far from a judicial act protected by immunity. It is beyond the authority of the court for the same reason that the rulings complained of in the com-

plaint are beyond the authority of the court and not judicial acts. A judicial act is application of law to fact. District of Columbia Court of Appeals v. Feldman, *460 U.S. 462, 477;* Prentis v. Atlantic Coast Line Co., *211 U.S. 210, 226; Complaint (Doc. 1), ¶9. The facts of the case are described only as* 'an elaborate recitation of his unsuccessful results in prior suits at the trial level and at the appellate levels.' *No mention is made of the challenges to the authority of the court in the respective cases, nor to the legal theories that they are not within the judicial power under Art. 3, §2 of the United States Constitution, a denial of due process amounting to usurpation, infliction of badges and incidents of slavery, and denial of access to the court. Like the decisions recounted in the complaint (Doc. 1), this dismissal (Doc. 2; App. 1) is not a decision on the facts and law but just another exercise in knocking down a straw man. It is a flick and a wave, appropriate perhaps from some hereditary aristocrat, or a reject slip, well within the perogative of a publication or a college or a country club, perhaps, but not of a judge sworn to uphold the law. It is an exercise of fiat, not reason, of will, not judgment. If immunity promotes carelessness while liability promotes caution,* Rabon v. Rowan Memorial Hospital Incorporated, *269 NC 1, 152 SE 2d 485, 493, then notions of overly inclusive immunity promote complete irresponsibility."*

42. So far, again, Wendt's repeated challenges notwithstanding, he has yet to see the slightest express assertion, from the bench or the other side, that the federal judges in his litigation have actually played a judicial role and that the decisions he refuses to accept are indeed valid, not void. See Cleavinger v. Saxner, 474 U.S. 193, 201-202, on the functional approach to immunity, by which any claim in Wendt's nonfunctional litigation would have to be laughed off as insubstantial indeed. The usual inaction by this Court would complete a private usurpation of the judicial process.

G. What Finality In Wendt's Litigation?

43. As noted above, ¶34, the original trial court order is void. Thus it is a legal nullity that can be reopened

at any time. FRCP 60(b)(4). Like land mines that sit there forever, void decisions can blow up at any time. Or pile up, as the bodies did in the Georgia crematorium scandal. Homola's apoplexy about relitigation is misplaced when courts do not hold up their end, as they have not in any of Wendt's cases, in particular when an appeal is not heard, as here. Wendt recalls an appellate judge say there is nothing appellate judges fear as having their own words handed back to them. In Wendt's experience, however, that is no problem in the 7th Circuit. It is with a sense of futility, then, that Wendt cites Patterson v. Crabb, 904 F.2d 1179, 1180 (7th Cir. 1990), on the lack of finality in void, unheard appeals, but, who knows, such efforts might help future generations understand what is so screwed up in this day and age:

"... Although Rule 40(a) of the Federal Rules of Appellate Procedure allows only fourteen days for the filing of a petition for rehearing..., courts of appeals have asserted the power (analogous to that conferred on the district courts by Fed. R. Civ. P. 60(b)) to recall a mandate, in effect reopening the case, without limit of time, although only in exceptional circumstances. (citations) The assertion of this power fills a gap in the appellate rules and is well within the traditional authority of courts, properly described as inherent, to regulate procedures in them in the absence of legislatively prescribed rules. (citation) The exercise of this power is unproblematic in a case such as this where the appellant ***through judicial error never obtained a hearing of his appeal*** *and the appellee does not contend that he will be harmed by the reopening of the matter."* (emphasis added)

44. Submitted April 18, 2003, per caption of the May 6, 2003 order (1a), fourth line from the top? What does it mean? Why is that Wendt's first notification? What happened on that date? A secret proceeding? Submitted in a confidential meeting of the Court, its members acting as defendants and adjudicators both? The appellate counterpart of a *sua sponte* dismissal without notice? Wendt filed his brief on April 2, 2003. It might be a bit much on his part to expect an explanation, but he

does, if he is hardly holding his breath.

H. Clarify Meaning of "Reason"

45. At least this is an opportunity to clarify the meaning of "reason" for purposes of Circuit Rule 50, if not the entire court system, supposedly based on it. That is, if written law is anything more than a collection of fig leaves selectively applied by the courts to protect paramount interests, unavailable to their opponents. Construing Circuit Rule 50 the 7th Circuit held it,

"... *serves three important functions: 'to create the mental discipline that an obligation to state reasons produces, to assure the parties that the court has considered the important arguments, and to enable a reviewing court to know the reasons for the judgment.' (cite)*" Sims v. Lucas, 9 F.3d 1293, 1294.

46. Obviously these purposes are far from served by the trial court using "factually frivolous" as legal invective (2a), deflecting any reference to a legal definition (5a). What is a legal "reason" devoid of any legal definition or legal reasoning? Is kicking the case upstairs, as obviously, undeniably done here, a proper judicial act or anything close to application of law to fact? Is it instead an undisputed if unadmitted disqualification? At least Saddam Hussein seems to know where the buck stops. Trial courts ought to be put on notice that self-serving, stonewalling personal impressions do not qualify as reasons. Since when do trial courts have any less duty "to say what the law is" than reviewing courts? And why should they be allowed to so grossly disrupt the judicial process? Even more so reviewing courts, unless reasons need only be the same *"inarticulable intuitions,"* on which *"independent review... does not admit... unreflective reliance."* Salve Regina College v. Russell, 499 U.S. 225, 231-233 (1991)

I. Federal Violations From The Bench

47. However carefully the 7th Circuit reviewed the final order, etc., the order of May 6, 2003 (1a) only names three defendants out of twenty-eight and did not even include an "et. al." to indicate those not named, including twelve members of the 7th Circuit. The order of May 6,

2003 gives no indication that a member of the panel issuing the order, Circuit Judge Ann Claire Williams, is herself named as a defendant in this matter, the other two being colleagues, of course. However disingenuous of the panel not to even mention this direct conflict of interest, the veil is far too thin to obscure the obvious reality. The very language of the order puts its basis in private, personal sentiment, not public law. The most cursory or careful review by an objective observer would reveal a blatant, personal use of public power for private advantage. The two orders denying the petition for rehearing (6a, 7a) at least added an "et. al." in the caption.

48. There seems to be no annotation for Title 18, United States Code, Section 201(c)(1)(B) for personal self-dealing from the bench, yet, but if the shoe fits, wear it:

"Whoever- otherwise than as provided by law for the proper discharge of official duty- being a ***public official,*** *former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty,* ***directly or indirectly*** *demands, seeks, receives,* ***accepts, or agrees to receive*** *anything of value personally for or* ***because of any official act performed*** *or to be performed* ***by such official*** *or person; shall be fined under this title or imprisoned for not more than two years, or both."* (emphasis added)

49. Likewise if Title 18, United States Code, Section 208(a) fits, which, in one of many annotations, U.S. v. Nevers, 7 F.3d 59, 61, n5, is reproduced as follows:

"Except as permitted by subsection (b) hereof, whoever, being an ***officer*** *or employee of the executive branch of the United States government,* ***of any independent agency of the United States, ... participates personally as a government officer or employee, through decision,*** *approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise,* ***in a judicial*** *or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge,* ***he,*** *his spouse, minor child,* ***partner,*** *organization in which he is serving as an offi-*

cer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement for prospective employment, ***has a financial interest-*** *Shall be fined not more than $10,000, or imprisoned not more than two years, or both."* (emphasis added)

50. Himself named as a defendant in the complaint, Judge Michael Kanne nevertheless denied without explanation four motions and a petition in the appeal on April 3, 2003 (8a), likewise making no mention that he was named as a defendant or even listing the members of this Court named as defendants. The MOTION FOR NORMAL ACCESS TO THE COURT (52a) asserted that Wendt had been denied entry to the courthouse for not having a photo ID and that this violated his constitutional rights. Indeed, such photo ID is getting to be the functional equivalent of a South African passbook. There is no indication from the order that any pleading was read beyond the cover. The petition was named as it was on the cover, not the first page. This is quite boorish enough on the 7th Circuit's part to show its judges consider life a one-way street and do not acknowledge even the most basic obligations to Wendt.

51. Among the shoes that might fit are 18 USC 3 (Accessory after the fact), 4 (Misprision of felony), 241 (Conspiracy against rights), 242 (Deprivation of rights under color of law), 371 (Conspiracy to commit offense), and 401 (Contempts). Also see U.S. v. Ramsey, 785 F.2d 184 (7th Cir. 1985), deliberate ignorance is evidence of criminal intent.

J. Timidity Badge of Coerced Court?

52. Federalist 78 said, *"That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission."* What, then, should the public expect from that inflexible and uniform AVOIDANCE of the rights of the Constitution, and of individuals, in Wendt's litigation?

53. What are the failures to rule on points of law

in this case, as well as Wendt's two previous cases, but craven timidity? What can we conclude, or at least suspect, from such timidity? Citing defendant Posner's dissent, Forrester v. White, 484 U.S. 222, 226-227, held:

"If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication."

54. If private lawsuits can do that, then what to expect from government power as seen in Lord v. Kelley, 240 F. Supp, 167, 169, judges who offend the Internal Revenue Service can expect a close inspection of their tax returns, and State Bar of Nevada v. Claiborne (¶37)?

55. What should we at least strongly suspect of federal prosecutors collecting data on "downward departures" from sentencing guidelines by federal judges? A New York Times editorial said, *"... Even Chief Justice William Rehnquist, whose conservative credentials are unassailable, has warned that collecting data on judges' sentencing practices 'could amount to an unwarranted and ill-considered effort to intimidate individual judges.'"* "Blacklisting Judges," August 10, 2003, p10

56. The issue of a coerced court was raised in the previous case, (01-1613, ¶¶98-100), the complaint ¶¶59, 50, 63 (66a, 97a, 99a), the MOTION FOR ADJUDICATION IN SPIRIT OF PATRIOTIC SELF-SACRIFICE (11a), and above, ¶¶36-37, that from the brief and the motion to alter or amend. It will not be resolved, but only aggravated by continued timidity, It will be resolved only by discontinued timidity, at whatever personal or institutional risk. The process of a coerced court is, again, in legal contemplation, void, Moore (¶36), quite likely in public contemplation too.

K. No Equal Menace of Law?

57. The 7th Circuit was far from timid in curbing relitigation, once upon a time at least. Homola, 648, verged on the apoplectic, starting at a furious gallop:

"Litigation is society's way to resolve disputes. Courts invite parties to make their evidence and arguments known. Appellate courts correct errors. After the process has run its course, there should be peace between the former adversaries. Many persons do not see litigation this way, however. They adopt a never-say-die attitude. If the first case goes against them, then some chicanery must be to blame. Now if courts are unable to separate truth from fiction- the premise of this attitude toward the results of litigation- one would suppose that the remedy lies in a political forum, or perhaps is an occasion for writing an expose`. Yet many litigants who refuse to accept judgments against them see their balm as-more litigation! If the judicial process is as inept as these litigants believe, then one wonders why they try, try again. Do they hope that their adversary will be more placid than they have been and will accept an adverse judgment? Yet why, if judgments are not final when adverse, should they be final when favorable? Or is the new suit just an effort to heap costs on one's nemesis, without regard to any prospect of obtaining a favorable judgment? Either way, the new suit is vexatious and intolerable, a ground of sanctions and, if the offense recurs, an order closing the courthouse doors..."

58. Raymond Homola got over a page of factual account and almost two pages of legal analysis before getting 15 days to show why he should not be subject to sanctions. Homola, 651, concluded, *"As we said at the outset, the judicial system cannot tolerate litigants who refuse to accept adverse decisions..."* At least it shows no fear of attracting attention. Why, then, do the federal courts play possum in Wendt's cases, this one nothing but relitigation? Where, indeed, is his equal menace of law, unless, indeed, the courthouse door has been slammed already, quite without an order? Why o why is the 7th Circuit so timid even after the petition for rehearing en banc baited it at length over equal menace of law? Why, even after Wendt threatens another lawsuit over this case, does the 7th Circuit issue another unexplained denial? What are all these reject slips but an attempt to

keep certain matters below the public radar?

59. Apparently the federal judiciary can deal with the issues presented in no other way except to keep them below the radar. If so there is no way to resolve them, except in the full glare of publicity and a searching reexamination of the country's legal institutions. That, indeed, even on the advice of Homola itself, 648, which ought to raise the question why Wendt's incomparably more outrageous relitigation only gets an unpublished, don't-touch-it-with-a-ten-foot-pole, *sotto vocce* brush-off.

L. What the Judges THINK It Is?

60. Wendt briefly mentioned his previous case, that federal funding of local projects is unconstitutional (01-1613), to a somewhat outre legal scholar, whose reaction was, *"Well, they just don't think that is the law anymore."* Never mind that U.S. v. Butler, 297 U.S. 1, has never been overturned, leaving Wendt to wonder, *"Is the Constitution now merely what the judges THINK it is?"*

61. That was some months before Wendt discovered Charles Beard, Public Policy and the General Welfare (1941)(a), on the "spend ourselves rich" cases of the New Deal, not holding government to enumerated powers. And that in turn was some months before Wendt discovered Mark Kozlowski, The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts (2003), among other things, an exposition of original intent on original intent and a debunking of what passes for original intent in some quarters. If not quite relating the latter to Holmesian deference to power (56a), p34 cites that neo-Holmesian apostle of deference, Robert Bork, The Tempting of America, p158, on pseudo-original intent:

"Yet, even though (Bork) views the entire body of cases 'validating certain New Deal and Great Society programs' as wrongly decided on originalist grounds, these decisions should not now be overturned because to do so 'would be to overturn most of modern government and plunge us into chaos.'"

62. All this is uncannily congruent with Wendt's complaints about contemporary historical developments, economic (22a-24a) and juridicial, embracing most odi-

ous functions. From the previous case (01-1613):

"72. The historic parallels are a bit too close for comfort when the government accuses Wendt of 'contravening the law' for arguing an administrative regulation incompatible with NEPA and the court simply ignores his constitutional and statutory arguments both. Paul Craig Roberts and Lawrence M. Stratton, The Tyranny of Good Intentions: How Prosecutors and Bureaucrats are Trampling the Constitution in the Name of Justice, xi, quote a collection of Nazi documents, *'German law reflected the tradition of a strong state as the embodiment of the community by which individuals would be granted such rights as were considered compatible with its interests.'"* Concluding a chapter on the abdication of legislative authority to unelected bureaucrats, they give the Nazi Enabling Act credit for more candor, at least, than current American practice:

"'In addition to the procedure for the passage of legislation outlined in the Constitution, the Reich Cabinet is also authorized to enact Laws... The national laws enacted by the Reich Cabinet may deviate from the Constitution... The national laws enacted by the Reich Cabinet shall be prepared by the Chancellor and published in the official gazette. They come into effect, unless otherwise specified, upon the day following their publication.'" pp171-172

63. *"Three generations of imbeciles are enough,"* intoned Oliver Wendell Holmes in Buck v. Bell, 274 U.S. 200, 208, approving sterilization of mental defectives and part of an American eugenics movement that inspired Hitler (Peter Quinn, "Race Cleansing in America," American Heritage, March 2003, pp34, 36). As for imbecility in governmental affairs, Joseph Story most undeferentially rebutted Holmes well in advance. From his Commentaries on the Constitution of the United States, Chapter XXXVIII, §818, emphasis added:

"... Where there is no judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own ***imbecility,*** *or the other depart-*

ments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty. The will of those, who govern, will, under such circumstances, become absolute and despotic; and it is wholly immaterial, whether power is vested in a single tyrant, or in an assembly of tyrants... And it is no less true, that personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice. If that government can be truly said to be despotic and intolerable, in which the law is vague and uncertain, it cannot but be rendered still oppressive and more mischievous, when the actual administration of justice is dependent upon caprice, or favour, upon the will of rulers, or the influence of popularity. When power becomes right, it is of little consequence, whether decisions rest upon corruption, or weakness, upon the accidents of chance, or upon deliberate wrong. In every well organized government, therefore, with reference to the security of both public rights and private rights, it is indispensable, that there should be a judicial department to ascertain, and decide rights, to punish crimes, to administer justice, and to protect the innocent from injury and usurpation." (also quoted in 01-1613 [pp17-18, ¶64], as often quoted in Wendt's ignored objections to "selective binding authority," most recently, the PETITION FOR EN BANC CONSIDERATION..., ¶25)

64. Is the law merely what the judges think it is? Yes, if the law is no more than a Holmesian prediction of what a court will do, properly deferential to power, of course, if the paramount obligation is to the expression of power, not to its proper source. Quoted in 00-325, pp28-29. ¶¶72-73, Jay M. Feinman, Law 101: Everything You Need to Know About the American Legal System, pp124, 125, succinctly shows, not quite how the law came to be what the judges think it is, but the penultimate step:

"More importantly, from the colonial era through the early days of the Republic, the jury was a lawmaking institution as well as a fact-finding body. Early Americans understood law to be something that resided in the

customs and moral sense of the community; as members of the community, jurors had as much access to the law as the judges did..."

"...Moreover, we now believe that law is made by the legislature and the courts, not found in the community's values, so jurors are bound to apply the law that is given to them by the judge..."

65. Or is the law much more properly what the people think it is, a prediction of what the people will do?

"... The law grows from deposits of morality. Law and morality are, in turn, debtors and creditors of each other. The law cannot be adequately enforced by the courts alone, or by courts supported merely by the police and the military. The true secret of legal might lies in the habits of conscientious men disciplining themselves to obey the law they respect without the necessity of judicial and administrative orders. When the law treats a reasonable, conscientious act as a crime it subverts its own power. It invites civil disobedience. It impairs the very habits which nourish and preserve the law." U.S. v. Sisson, 297 F. Supp. 902, 910

66. No legal system can function without a sense of obligation. Wendt has noted in the lower courts that Vince Lombardi told the world champion Green Bay Packers they had to practice as hard as ever, that they could not throw their shirts on the field and expect to win games. Likewise, that Wendt is not a puppy whimpering for a pat on the head. Such perceptions are quite consistent with the law being merely what the judges think it is, with obligation being a one-way street, and with the highest incarceration rate in the world. Judicial department, judicial department, wherefore art thou?

M. Do Federal Judges Need to Be Deterred?

67. *"The purpose of* Bivens *is to deter individual federal officers from committing constitutional violations."* Correctional Services Corp. v. Malesko, 534 U.S. 61, 70 (2001). Do federal judges, the custodians of the Constitution, need to be deterred from constitutional violations? What is the record in Wendt's cases so far?

68. As this was written the report on the Columbia disaster was released; NASA's "culture of dismissal" is all over the news media. Wendt finds it reminiscent of courts dismissing his cases while repeatedly ignoring plainly cited law and fact, just as NASA ignored numerous incidents of foam hitting the heat shield. Law and fact, indeed, seem to be a small part of the deliberative process, as Wendt has often complained. (00-325, ¶¶22-28, 72-73; 44aff) The kindest explanation so far for such *lex non scripta* is Joyce J. George, Judicial Opinion Writing Handbook, Third Edition, p427:

"Repetition of intuitive concepts and accidental practices becomes habitual and these habits eventually are transformed into rigid traditions. Once so transformed, these traditions become unchallengeable truths. Since it has always been done that way, then it must be safe to continue doing so. 'We've always done it that way' becomes the unwritten law."

69. Something less kind and more far-reaching is Alan M. Dershowitz, Supreme Injustice: How the High Court Hijacked Election 2000, p152, which at least apprizes Wendt what his obvious skill in the law library is worth, and which offers cogent reason for any pro se litigant to disqualify all local judges in any court:

"... In order to make the kind of 'prophecies'- predictions about what the courts will do- that Holmes saw as central to the law, lawyers not only have detailed knowledge about judges' prior decisions, but also have a perceptive understanding of what actually motivates judges in their decisions. Reading their past decisions is obviously necessary, but it is not sufficient. A good lawyer must go beyond the opinions and beneath the rhetoric to get at the essence of the judge. The courthouse scuttlebut, the barroom gossip, the experience of insiders, the insights of former law clerks- these are what the client pays to get, over and above what any first-year associate can find in the library. That is why local lawyers are an important part of any complete legal team."

70. Quoted in full in the previous case (01-1613, 29a) and out of context by the government (01-1613, 19a),

Wendt's criticism of the legal system was fully stated in the complaint (87a, ¶46). Wendt stands by it fully, and will until he sees it as no longer valid.

71. Wendt is at an utter loss as to what judges can be convinced of, not only from his personal litigation, but when he reads of this Court granting certiorari in capital cases but not stays of execution, then dismissing the cases as moot after the prisoner is executed. Dershowitz, *op. cit.*, pp46-48, 51, 221-223.

72. Wendt is obviously unschooled in the fine art of buttering up judges, that being legal advocacy as he has seen it in his short life. Certainly, if he would argue that prayer to judges is unconstitutional (00-325, ¶¶72-73). There is a mentality in the court system with which he simply is not congruent, a mentality of fiat, not reason. Just how this is to be corrected, he is not sure, but he is plenty sure of its importance, if reason is not important enough in its own right. As Wendt argued in the previous case (01-1613), the right to sue is the right to protect all other rights and an orderly society, not to play personality games:

"The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." Chambers v. Baltimore & Ohio, 207 U.S. 142, 148 (1907)

73. Judging by Wendt's litigation, however, it is not a right federal judges take very seriously. What does it take to get their attention, if sweet reason is insufficient? If it takes deterrence to make it meaningful, so be it, provided, of course, it does not degenerate into coercion. Federal judges are in awkward postiton, unfortunately, deterring themselves. How does one deal with the Cult of the Robe Protective Association?

74. The greater deterrence may have to come from outside the judiciary, such as impeachments or public scandal. Per Homola, 648, again, "*one would suppose that the remedy lies in a political forum, or perhaps is an occasion for writing an expose`.*" The newspaper. in-

deed, furnishes that protection against government that no constitution can provide, went that old **Chicago Tribune** credo, hopefully when the courts stonewall constitutional issues, as they have in Wendt's two previous cases and this one too. Anything is legal in Chicago as long as it does not make press, even on the second highest court in the country. Will it take a scandal on the order of Enron or clergy sex abuse, another one, indeed, inflamed by a lack of candor? Or perhaps by the sort of candor in a judicial Trent Lott statement? (5a) Who knows what might happen, if the American public connects a few dots about all the *"spend ourselves rich," "something for nothing"* debt-mongering, including all the stupid wars the country gets into. Perhaps, too, a few dots challenging the unconventional wisdom that both political parties are the same, noting which in recent decades runs surpluses and which runs record deficits.

N. The Luke 18 Approach

75. What have we so far, as this case comes before the highest court in the country? What else, but an aggravation of the original cause of action? What else but purported rulings that ignore key points of law, if anything, more so than the rulings inspiring the complaint? What about the complaint arising from this case, if this Court does nothing? Will it get the Saddam Hussein approach too (¶21; 91a, 96a)? What is this, but a perpetual feedback loop, unless this Court breaks the cycle? Does the buck stop somewhere in the federal courts?

76. Even if it starts another church-state rowl, legitimate secular application of sacred scripture might clarify a thing or two, certainly when scripture is based on secular applications to begin with. What architect, of whatever religious belief or non-belief, would care to run afoul of the Gospel injunctions to build on rock, not sand (Matt 7:24-27) or to assure sufficient materials to complete the project (Luke 14: 28-30), the first appropriate for legal systems as well? There is no reason to sense any religious favoritism in such citation, nor from any similar application of Muslim, Hindu, Buddhist, or whatever sources. For legal purposes, for this case in

particular, the appropriate text is Luke 18: 1-8. the way to deal with crooked judges is to keep pestering them.

77. Is Wendt up to such a thing? From a personal standpoint, he cannot escape constant reminders of his thoroughly disruptive, decade long encounter with the draft, his constitutional objections to it (20a, 39a), and his long-standing objections to perverse influences on the bench (18a; Wendt v. Dillin, 396 U.S. 899, 1031, October Term 1969, 843 Misc.). At least it was educational, if his resulting legal skill is largely unsalable. His previous case objected to *"something for nothing"* funding of local projects, without which he could have had quite a productive career designing more economical public transportation systems. Beyond his ruined personal circumstances, he sees a number of unconstitutional policies as ruining the only world he has to live in. One memorable, early lesson in law was John Marshall's 1827 statement:

"...I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary." Evans v. Gore, 253 U.S. 245, 250-251

78. Thus, re legal actions, Wendt is a suicide bomber of sorts (if the judges keep their powder dry), and is not likely to be deterred, except by some long-forthcoming explanation where he is wrong, if any. Again, he is not some puppy dog whimpering for a pat on the head. In all this litigation neither court nor the other side has yet to tell Wendt where he is wrong. No one else has either, at least beyond the occasional suggestion he has set upon an impossible task. How is there to be *"peace between the former adversaries,"* Homola, 648, when the loser is left only to feel ignored and abused, the so far hapless victim of black-robed bullies and flim-flam artists? Absent the slightest hint of being wrong, Wendt might have to sue all the judges again for making him impossibly self-righteous. Far better, however, that he should be impossibly self-righteous than the judges.

O. Normal Access to Courthouse

79. Since last February a photo ID, which cannot

be obtained without a Social Security number, has been required to enter the federal courthouse in Chicago. Wendt has been twice prevented from entering the courthouse for not showing such a photo ID, once when attempting to file papers in this case. That includes the MOTION FOR NORMAL ACCESS TO THE COURT (52a), objecting to such a requirement on First Amendment grounds, denied without explanation. (8a, ¶48) These rights exist not only for personal purposes, but for public purposes such as maintaining the integrity and accountability of the courts. Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3rd Circuit), 1066-1071; Wilson v. American Motors Corp., 759 F.2d 1568 (11th Cir. 1985), 1570-157; Newman v. Graddick, 696 F.2d 796 (11th Cir 1983), 799-801: Matter of Continental Illinois Securities Litigation, 732 F.2d 1302 (7th Cir 1984), 1308-1313. A significant impairment of First Amendment rights must survive exacting scrutiny, Elrod v. Burns, 427 U.S. 347, Buckley v. Valeo, 424 U.S. 1, close scrutiny by this Court, McGowan v. State of Md., 366 U.S. 420

P. Reviewing Courts Should Retain Jurisdiction

80. The matter is not likely to be resolved in the trial court, short of convincing Wendt that courts can ignore key points of law without reducing law to favor or undermining the whole Anglo-American legal system. In any event, the trial court functions, however necessary, but with no likely dispute of fact, are not likely to resolve this matter and it will be back on review, this time with proper preparation and for legitimate reasons.

81. The trial court explicitly forced Wendt to take, in essence. an involuntary interlocutory appeal, seconded by the appellate court. If the courts do not favor interlocutory appeals, they ought to favor even less their own forcing any such thing. One way to "send a message" to any court similarly tempted is to relieve Wendt of any burden to file, at least to pay, for further review cases.

82. There is authority for a limited remand under which the appellate court retains jurisdiction pending completion of trial court or administrative proceedings, Jay's Foods v. Chemical & Allied Prod. Wkrs Union, 208

F.3d 610, 613 (2000); Jason's Foods, Inc. v. Peter Eckrich & Sons, Inc., 768 F.2d 189, 190-191(1985); Avery v. Secretary of Health and Human Services, 762 F.2d 158, 163 (1985), although which court retains the record might be a problem in this matter. Caterpillar, Inc. v. N.L.R.B., 138 F.3d 1105, 1107-1108 (1998).

Q. Summary Judgment Should Be Granted

83. That remand, of course, if the defendants have a defense to present. If not, summary judgment ought to be granted and the matter remanded merely for determination of damages. *"... if it were possible in practice to confine such complaints to the guilty (public officials), it would be monstrous to deny recovery..."* Gregoire v. Biddle, 177 F.2d 479, 481. That is quite possible here.

84. Due process would require notice to the defendants, as such, including the government attorneys. If they wish to advance a defense that cannot be dismissed out of hand, the matter should be remanded to the trial court. If not, summary judgment should be granted.

CONCLUSION

Wherefore action by this Court is necessary, if only to forestall a similar lawsuit over this case. At the very least the case has to be remanded to the trial court with instructions for normal proceedings, with a trial judge from outside the 7th Circuit. Jurisdiction should be retained for additional review without burdening Wendt with another filing fee. If there is no explanation for the requirement of a photo ID based upon a Social Security number as a legitimate security measure, Wendt should be allowed in the federal courthouse without one. If, upon notification, the defendants have no defense to offer, summary judgment should be granted. Wendt's two previous cases should be reopened for proper, responsive rulings and the matter remanded to the trial court for determination of damages.

William F. Wendt, Jr.
1651 Hubbard
Chicago, Illinois 60622
(312) 421-4862 (landlord)

APPENDIX

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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 18, 2003
Decided May 6, 2003

Hon. THOMAS E. FAIRCHILD, *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

WILLIAM F. WENDT, JR., Plaintiff-Appellant	] Appeal from the] United States] District Court for
03-1403 v.	] the Northern] District of Illinois,
WILLIAM H. REHNQUIST, Justice of the Supreme Court of the United States, JOHN P. STEVENS, Justice of the Supreme Court of the United States, SANDRA O'CONNOR,Justice of the Supreme Court of the United States, Defendants-Appellees.	] Eastern Division]] No. 02 C 7779]]Charles P. Kocoras,] Chief Judge.]]

This court has carefully reviewed the final order of the district court, the appellant's opening brief, and the record on appeal. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of the issues. *See Taylor v. City of New Albany,* 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein,* 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing or argument).

Accordingly, **IT IS ORDERED** that the judgment of the district court is summarily **AFFIRMED.**

(minute order form not duplicated entirely)

United States District Court, Northern District of Illinois

Name of Assigned Judge Charles P. Kocoras

CASE NUMBER 02 C 7779 **DATE** November 22, 2002

CASE TITLE **William F. Wendt, Jr. vs. Chief Justice William Rehnquist et al**

[Other docket entry] This matter is before the court on a complaint brought by plaintiff William F. Wendt ("Wendt"). Wendt's complaint provides an elaborate recitation of his unsuccessful results in prior suits at the trial level and at the appellate levels. Wendt is now before us suing all the judges and several prosecutors in the prior cases and asks this court to award damages and to overturn the prior rulings of the defendant judges in the Northern District of Illinois, the Seventh Circuit, and the United States Supreme Court. We dismiss *sua sponte* all claims brought under the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *See Ledford v. Sullivan,* 105 F.3d 354, 356 (7th Cir. 1997)(stating that sua sponte 12(b)(6) dismissals are allowed as long as a "sufficient basis for the court's action is evident from the plaintiff's pleading."). The plaintiff's complaint is factually frivolous.

(minute order form not duplicated entirely)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Michael W. Dobbins
CLERK

Office of the Clerk

Case Number: 1:02-cv-0779

Title: Wendt v. Rehnquist

Assigned Judge: Honorable Charles P. Kocoras

MINUTE ORDER of 12/18/02 by Hon. Charles P. Kocoras: Plaintiff's motion to alter or amend judgment [4-1] and to disqualify judge is denied in its entirety [4-2]. Mailed notice

This docket entry was made by the Clerk on December 19, 2002

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM F. WENDT, JR., Plaintiff,	)	Docket No. 02 C 7779
vs.	)	
WILLIAM REHNQUIST, Justice of the Supreme Court of the United States, et al., Defendants.	)	Chicago, Illinois December 18, 2002 9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE CHARLES P. KOCORAS

APPEARANCES:

For the Plaintiff: MR. WILLIAM F. WENDT, JR., Pro Se
1651 Hubbard
Chicago, Illinois 60622

Court Reporter: MS. JOENE HANHARDT
Official Court Reporter
219 S. Dearborn Street, Suite 2524-A
Chicago, Illinois 60604
(312) 435-6874

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PROCEEDINGS RECORDED BY
MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

THE CLERK: 02 C 7779, Wendt vs. Rehnquist. Motion to alter or amend judgment and to disqualify.

MR. WENDT: William Wendt, plaintiff pro se.

THE COURT: Mr. Wendt. You want me to recuse myself?

MR. WENDT: Yes.

THE COURT: I am not going to do that. We dismissed your complaint because it was factually frivolous.

And you can sue the universe, if you want. It does

not legitimize what you are doing. And it is too facile to require a judge to recuse himself just because you might name him and do other things.

I have read your-- in fact, I read the entirety of your-- memorandum, which, itself is factually frivolous. And the motion is denied.

MR. WENDT: Well, excuse me. Could you-- I raised the question of law. The only direct attack you made on my complaint is that it is factually frivolous.

THE COURT: Right.

MR. WENDT: Which means that by the definition that I found, citing Supreme Court decisions, is that the facts alleged are delusional or irrational.

The facts alleged in the complaint are entirely matters of record.

THE COURT: You have rights to appeal, and that is the avenue you have to take. But as far as being in the District Court is concerned, you are finished with me.

MR. WENDT: Well, that is, that is-- could be the Trent Lott statement of the federal judiciary. I mean--

THE COURT: That is a great example of what I am talking about. Trent Lott and whatever his circumstance is has nothing to do with whatever your claim is.

MR. WENDT: Well--

THE COURT: Nothing.

And for you to make an analogy to that suggests a connection that does not really exist.

I do not have anything more to say. The Court of Appeals is two floors up. I am sure you will find your way.

MR. WENDT: All right. Have it your way.

* * * * *

I certify that the foregoing is a correct transcript from the record record of proceedings in the above-entitled matter.

S/ JOENE HANHARDT Official Court Reporter

Jan. 9, 2003

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
July 7, 2003

Before
Hon. Thomas E. Fairchild, *Circuit Judge*
Hon. Richard D. Cudahy, *Circuit Judge*
Hon. Ann Claire Williams, *Circuit Judge*

No. 03-1403

William F. Wendt, *Plaintiff-Appellant,* *v.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No 02 C 7779
William H. Rehnquist, et. al. *Defendants-Appellees.*	Charles P. Kocoras, *Chief Judge.*

AMENDED ORDER

The order issued on July 3, 2003, is amended to read in its entirety:

On June 17, 2003, plaintiff-appellant filed a petition for rehearing and petition for rehearing en banc. All of the judges on the original panel have voted to deny the petition, and none of the active judges* has requested a vote on the petition for rehearing en banc. The petition is therefore DENIED.

---

*Joel M. Flaum, Chief Judge, and Richard A. Posner, John L. Coffey, Kenneth F. Ripple, Daniel A. Manion, Michael S. Kanne, Ilana Diamond Rovner, Diane P. Wood, and Terence T. Evans, Circuit Judges, took no part in the consideration of the petition.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

July 3, 2003

Before

Hon. THOMAS E. FAIRCHILD, *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*

WILLIAM F. WENDT, Jr.,

Plaintiff-Appellant,

No. 03-1403 *v.*

WILLIAM H. REHNQUIST, et. al.

Defendants-Appellees,

Appeal from the United States District Court for the NorthernDistrict of of (sic)Illinois, Eastern Division.

No 02 C 7779

Charles P. Kocoras, *Chief Judge.*

ORDER

Plaintiff-appellant has filed a petition for rehearing and petition for rehearing *en banc*. Chief Judge Joel M. Flaum, and Circuit Judges William J. Bauer, Richard A. Posner, John L. Coffey, Kenneth F. Ripple, Daniel A. Manion, Michael S. Kanne, Ilana Diamond Rovner, Diane P. Wood, Terence T. Evans and Ann Claire Williams have recused themselves. No judge in regular active service has requested a vote on the petition for rehearing *en banc* and Judge Williams, a member of the original panel, having recused herself did not vote. Judges Thomas E. Fairchild and Richard D. Cudahy, a majority of the original panel, have voted to deny the petition for rehearing.

Accordingly, the petition for rehearing is therefore DENIED.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

April 3, 2003

Before
Hon. MTCHAEL S. KANNE, *Circuit Judge*

WILLIAM F. WENDT, JR., Plaintiff-Appellant	] Appeal from the] United States] District Court for
03-1403 v.	] the Northern] District of] Illinois,
WILLIAM H. REHNQUIST, Justice of the Supreme Court of the United States, JOHN P. STEVENS, Justice of the Supreme Court of the United States, SANDRA O'CONNOR, Justice of the Supreme Court of the United States,	] Eastern Division]] No. 02 C 7779]]Charles P. Kocoras] Chief Judge.]
Defendants-Appellees.	]

The following are before the court;

1. MOTION FOR NORMAL ACCESS TO THE COURT, filed on March 25, 2003, by the pro se appellant.

2. MOTION FOR ADJUDICATION IN SPIRIT OF PATRIOTIC SELF-SACRIFICE, filed on March 25, 2003, by the pro se appellant.

3. MOTION FOR PRIORITY OVER CASES ENFORCING UNCONSTITUTIONAL, OVERLY HAMILTONIAN LAWS, filed on March 25, 2003, by the pro se appellant.

4. PETITION FOR EN BANC CONSIDERATION, filed on March 25, 2003, by the pro se appellant.

IT IS ORDERED that #1, #2, #3 and #4 are DENIED.

CONSTITUTIONAL PROVISIONS AND STATUTES

Article III, §§1, 2, in pertinent part

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution (and) the Laws of the United States...; - to Controversies to which the United States shall be a Party ...

Due Process Clause of the 5th Amendment:

No person shall ... be deprived of life, liberty, or property, without due process of law...

13th Amendment:

§1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§2. Congress shall have power to enforce this article by appropriate legislation.

Civil Rights Act of 1866 (42 United States Code 1981(a)), in pertinent part:

All persons within the jurisdiction of the United States shall have the same right in every State ... to sue ... and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens....

(cover page omitted; parties as on 64a)

IN THE 7th CIRCUIT COURT OF APPEALS

No. 03-1403

WILLIAM F. WENDT, Jr.,	)	
Plaintiff-Appellant, Pro Se	)	No. 02C7779
v.	)	Judge
WILLIAM REHNQUIST, FRANK	)	KOCORAS
EASTERBROOK, WAYNE	)	Magistrate
ANDERSEN, SAMUEL BROOKS,	)	Judge
et. al., Defendants-Appellees	)	SCHENKIER

MOTION FOR ADJUDICATION IN SPIRIT OF PATRIOTIC SELF-SACRIFICE

William F. Wendt, Jr., Plaintiff-Appellant, pro se, moves for adjudication of this case in the spirit of patriotic self-sacrifice. In support he offers as follows:

THE USUAL GROUNDS FOR DISQUALIFICATION

1. *"No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be judges and parties at the same time...,"* said James Madison in Federalist 10. The law has long had one approach, nevertheless, to situations in which judicial self-interest is inescapable:

"... [T]here is a maxim of law to the effect that where all are disqualified, none are disqualified. Evans v. Gore, 253 U.S. 245....(1920) The theory supporting this maxim is that if disqualification operates so as to bar justice to the parties and no other tribunal is available, the disqualified judge or judges may by necessity proceed to judgment. 48 C.J.S. Judges §74." Pilla v. American Bar A'ssn., 542 F.2d 56, 59 (1976)

2. Pervasive self-interests or close relationships among federal judges are obvious enough in this matter, even those from far removed locations. There are likely precious few judges with any length of service who have not disposed of a case in the manner complained of here. This case is very much an attack on what Wendt gathers is "business as usual" in the federal courts, in which federal judges ignore key points of law in rendering ever-

yday decisions. "Business as usual" has also largely vitiated the Constitution as a charter of limited powers, at least in economic matters; see Wendt's parallel MOTION FOR PRIORITY OVER CASES ENFORCING UNCONSTITUTIONAL, OVERLY HAMILTONIAN LAWS

3. Likewise vitiated, as shown below, by no coincidence, are the provisions for judicial independence, the life tenure and the undiminishable income. It is a further objection to "prayer" to judges,as Wendt made in the Univ. of Ill. case, in the petition for rehearing en banc and in the petition for certiorari, not merely because it offends his religious sensibilities, but because judges take it far too literally. The prejudice is overwhelming enough that, if the trial court were unprejudiced enough to actually apply a legal definition of "frivolous," it could have found several dozen headnotes in Words and Phrases, to the effect of "incapable of winning." This case may well accomplish nothing except to expose the Cult of the Robe Protective Association, the trial judge being a charter member. If the arguments below are academic or close to it for purpose of disqualification, at least they set forth some dimensions of the patriotic self-sacrifice needed to apply law to fact in this matter.

DISQUALIFICATION ON GROUNDS OF COERCION

4. At the very least a trial judge from outside the 7th Circuit is needed, if only because the appellate judges form the Judicial Council which has the coercive power under 28 U.S.C. 167, 322 to strip a trial judge of his duties, over which even the Supreme Court has very limited power of review. Chandler v. Judicial Council of the Tenth Circuit, 398 U.S. 74.

5. This case is very much concerned with limits of government power and judicial integrity, especially in seeking to reopen Wendt's case against the Secretary of Transportation over federal funding of local projects. In that case the government said no legal discussion was possible and Wendt raised the possibility of a coerced court, Prescient indeed, then, for purposes of this case are the words of "Brutus," *New York Journal,* March 20, 1788, The Debate on the Constitution: Federalist and

Antfederalist Speeches, Articles, and Letters During the Struggle over Ratification, Part Two, 372, 373-374, also appended to Corwin, Court Over Constitution, p251, combining the very concerns of judicial independence and limitation of power:

"The great reason assigned, why the judges in Britain ought to be commissioned during good behavior, is this, that they may be placed in a situation, not to be influenced by the crown, to give such decisions, as would tend to increase its powers and prerogatives. While the judges held their places at the will and pleasure of the king, on whom they depended not only for their offices, but also for their salaries, they were subject to every undue influence. If the crown wished to carry a favorite point, to accomplish which the aid of the courts of law was necessary, the pleasure of the king would be signified to the judges. And it required the spirit of a martyr, for the judges to determine contrary to the king's will. - They were absolutely dependent upon him both for their offices and their livings. The king, holding his office during life, and transmitting it to his posterity as an inheritance, has much stronger inducements to increase the prerogatives of his office than those who hold their offices for stated periods, or even for life. Hence the English nation gained a great point, in favor of liberty. When they obtained the appointment of the judges, during good behaviour, they got from the crown a concession, which deprived it of one the most powerful engines with which it might enlarge the boundaries of the royal prerogative and encroach on the liberties of the people. But these reasons do not apply to this country, we have no hereditary monarch; those who appoint the judges do not hold their offices for life, nor do they descend on to their children. The same arguments, therefore, which will conclude in favor of the tenor of the judge's offices for good behaviour, lose a considerable part of their weight when applied to the state and condition of America.But much less can it be shewn, that the nature of our government requires that the courts should be placed beyond all account, so much so as to be above controul."

6. Wendt twice raised the question of a coerced court in the previous case in this Court, first in Wendt's RESPONSE TO MOTION FOR SUMMARY AFFIRMANCE, referenced in the complaint, ¶59:

"17. With nothing on the table from the other side, Wendt has to wonder what is under it. He has already taken a strenuous position against special pleading by prominent parties in his previous lawsuit, considering it influence peddling or an attempt to intimidate the court, also beyond judicial and prosecutorial immunity (which again he would reference, except again he cannot see where any of that has been read). If the United States government would try to slam the courthouse door with such ill-begotten, mendacious technical sophistry as presented here, then how low would it stoop? Former Chief Federal District Judge Charles Wyzanski, at the time considered the most eminent trial judge in the country, gave one part of the answer in Lord v. Kelley, 240 F. Supp, 167, 169:

"More than once the judges of a court have been reminded that they personally are taxpayers. No sophisticated person is unaware that even in this very Commonwealth the Internal Revenue Service has been in possession of facts with respect to public officials which it has presented or shelved in order to serve what can only be called political ends, be they high or low. And a judge who knows the score is aware that every time his decisions offend the Internal Revenue Service he is inviting a close inspection of his own returns..."
(which seems to Wendt the best explanation why the federal courts have rejected the 'wages not income' argument some six dozen times without ever addressing it, as Wendt argued July 20, 2001)

"18. Somewhat more explicit is State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988), almost 90 pages of court opinion, exhibits, and concurrence on the sandbagging by federal agents of former Federal District Judge Harry Claiborne, the first federal judge in recent years to be impeached. The concurring opinion says in conclusion at 551,

"... One of the greatest bulwarks for freedom in this country is our independent, life-tenured federal judiciary. It is vitally important, therefore, for the notion never to gain credence that a United States District Judge can be easily targeted, discredited, and destroyed. Whenever such an effort to discredit and destroy a federal judge is undertaken, I think it is essential that any suspect facts concerning the undertaking shall be made known..."

"... it may be fortunate for our country's system of checks and balances that the targeting and pursuit of the United States District Court judge here in question has not ended with his total annihilation..."

"19. Regarding former Federal District Judge Alcee Hastings, the second or third to be impeached in recent years, it seems the FBI presented tainted evidence against him. **New York Times**, February 26, 1997, A 16: 4, February 28, 1997, A 22:3. Significant to Wendt is simply that the attempt was made. The process of a coerced court is, of course, void. Moore v. Dempsey, 261 U.S. 86,"

7. It was also raised in the PETITION FOR REHEARING EN BANC, briefly referenced in the Complaint, ¶61:

APPEARANCE OF COERCED COURT

"7. Even though, again, the order says, or seems to say, all filings in the case have been carefully reviewed, there is one, nevertheless, that was not reviewed at all. That is, there is one "filing" that was not even filed. By FRAP 27(a)(4) Mineta had seven days to file a reply to Wendt's response on November 16, due on November 23. The order was issued, however, on November 20, four days earlier, precluding his reply.

"8. This would, in itself, be of no great moment, except that Wendt's response cited three separate, sufficient reasons for rejecting the government's attempt to slam the courthouse door with completely ill-begotten, mendacious, technical sophistry. It further posed the question, if the government has nothing on the table, what does it have under the table? It then cited Lord v. Kelley, 240 F. Supp, 167, 169 and State Bar of Nevada v.

Claiborne, 104 Nev. 115, 756 P.2d 464 (1988) on the government holding coercive power over judges' heads. One would expect the government's response to be of some interest. It was precluded three days before it was due, however, by the order of November 20, an order giving the government everything it wants, but giving the uninitated absolutely no idea what the case is about, an order based only on "unreflective reliance" and "inarticulable intuitions," uncritical and arbitrary at best, craven and supine at worst, without visible means of support.

"9. It would have been far better form on the Court's part to at least wait for the government's reply, at the very least for the sake of appearance, if only to avoid some appearance of caving in to a baseless motion to slam the courthouse door. Again, justice must have the appearance of justice, Marshall v. Jerrico, Inc., 446 U.S. 238, 243.

"10. *"[i]t is gratuitous cruelty to put counsel through the exercise of writing briefs... when the outcome is foredoomed,"* as Mineta's motion quotes Mather v. Village of Mundelein, 869 F.3d 356, 358, also cited in the order. Foredoomed by what? If foredoomed by law and facts, set forth in an adequate lower court decision, then there is no proper objection. Neither the government nor the Court have in any way, however, have had the sheer gall to actually call the lower court order adequate, even if summarily affirming an order that admits its own inadequacy. If foredoomed by anything else, however, then the judicial process is indeed abandoned, as Wendt argued on other grounds (brief, pp15-24, ¶¶63-86). The process of a coerced court is, of course, void. Moore v. Dempsey, 261 U.S. 86, as Wendt's response noted, ¶19.

"11. Due process requires not only an impartial adjudicator, but the appearance of one. Marshall v. Jerrico, Inc., 446 U.S. 238, 243. It is likewise incompatible with the "badges of fraud" in this case, a concept not yet applied to fraud upon the court, to Wendt's knowledge, but it is a precedent waiting to be set. Even though the order says the issues that could be

raised are insubstantial, ignoring those already raised, it creates most substantial issues of its own."

8. The question was also raised in the petition for certiorari. To date, there has been no response by court or counsel.

9. It would seem that coercion of the courts has been subtly institutionalized since the court packing threats of the 1930s. There has even been fleeting judicial recognition of external pressures during the court-packing controversy of the 1930's, Brzonkala v. Virginia Polytechnic Institute, 169 F.3d 820, 890, concurring opinion. The changes in constitutional doctrine are easily seen in conjunction with external threat:

"By way of contrast, Franklin Roosevelt wrote to the chairman of the House Ways and Means Committee in 1935, 'I hope your committee will not permit doubts as to the constitutionality, however reasonable, to block the suggested legislation.' Thirty-three years later, Rexford Tugwell, one of the principal architects of the New Deal, would observe,"To the extent that these [New Deal policies] developed, they were tortured interpretations of a document [i.e.,the Constitution] intended to prevent them.'

"... As an added benefit, congressional candor may embolden the courts to do what they should have done all along, even in the face of Roosevelt's Court-packing scheme, namely declare acts of Congress that are unconstitutional to be just that. (If the Roosevelt administration wanted to enlarge the powers of the federal government, it should have done so by urging the amendment of the Constitution, not by coercing the Court to ignore it.)"

"... What is more, they were up against the intellectual climate of the day, which is no small matter for jurists trying to justify their decisions in written opinions.

"By the time the Court faced the legislative juggernaut of the New Deal, therefore, it was hardly in a position of strength. Still, it managed to hold the line, for the most part, until Roosevelt introduced his notorious

Court-pacing scheme. There followed the 'switch in time that saved nine,' which culminated in famous footnote 4 of Carolene Products *(1938) and in the end of economic liberty as a serious constitutional right. The New Deal was not to be denied- either by enumerated powers or by individual rights."* Roger Pilon, "A Government of Limited Powers," Cato Handbook for Congress: Policy Recommendations for the 104th Congress, pp19, 32

10. Previously exempt from income tax, by Evans v. Gore, supra, the federal judiciary came under its wiles and snares about this same time under its reversal, O'Malley v. Woodrough, 307 U.S. 277. If Wendt has no idea, yet, of the "inside baseball" behind this one, the rationale of the reversal is little but international fashionability. It has no reference to the possibility of pressure via audits and such. About this same time Al Capone was convicted on income tax charges, leaving the national watchword, if they can get him, they can get anyone.

11. In John W. Dean, The Rehnquist Choice: The Untold Story of the Nixon Appointment That Redefined the Supreme Court, The Free Press, 2001, we find, p1-2:

"It is well known that Richard Nixon made extraordinary use and abuse of his presidential powers. It is not widely known that those uses and abuses also related to the Supreme Court. More that any president since Franklin D. Roosevelt, he worked hard to mold the Court to his political liking. That meant not only making conservative appointments; it also meant creating *appointments. William Rehnquist, who would be Nixon's most important appointment, was actively involved in the efforts to create vacancies on the Court while serving as an assistant attorney general. It is not an overstatement to say that Rehnquist, working with Nixon's attorney general, John Mitchell, and others, misused the resources and powers of the Department of Justice, and other executive branch agencies, to literally unpack the Court by removing life-tenured justices they found philosophically or politically unacceptable. It was all part of a strate-*

gy that commenced even before Nixon assumed office." (original emphasis)

12. It has been commonplace political lore for some thirty years now that the conviction of a former member of this Court, Otto Kerner, was revenge for Richard Nixon's defeat in the election of 1960. This is a delicate task, to be sure. Bill Barnhart and Gene Schlickman wrote in Kerner: The Conflict of Intangible Rights, p277:

"There was no rush to judgment in Washington after Walsh first presented Everett's story, contrary to the suggestion in Messick's book of a Nixon campaign dedicated to 'getting Otto's ass.' Nixon had cavalierly ordered investigations and individuals who opposed his policies, but investigating the returns of a respected federal appeals court judge from Mayor Daley's organization would not be undertaken casually. It required long, disciplined work and had to be held in strict secrecy, lest Nixon himself find himself accused of unconstitutional interference with the federal judiciary..."

DISQUALIFICATION FOR OWNING BANK STOCKS

13. This case is indirectly an attack on government spending, by seeking to reopen Wendt's second case and enforce a constitutional prohibition on federal funding of local projects. The second case, Wendt v. Slater/Mineta, sought to have 49 USC 5301 *et.eeq.* declared unconstitutional because, among other reasons, its funding of local transportation projects creates perverse incentives for overly expensive projects. Seeking to exert a heretofore unprecedented restraint on government spending, however constitutionally based, it would create a conflict of interest in any judge holding a personal interest in government debt, directly or indirectly.

14. "Brutus" premised his argument against an independent judiciary on the lack of a permanent interest in expanding government in this country. That, while predicting in other essays on the Constitution the concentration of federal power, the overbearing judiciary, and construction of the army clause to include conscription. In his 1957 Pulitzer Prize history winner,

Banks and Politics in America from the Revolution to the Civil War, vii, Bray Hammond, a former Federal Reserve official, uses banks to spy out things not so clearly seen from any other angle. So does Wendt, especially to spy out a permanent, so far, interest in this country in expanding government spending and powers.

15. The relationships among war, spending, and debt were succinctly outlined in Federalist 34, a truly Hamiltonian, ratification debate statement showing, among other things, the interest traffickers in government debt have in war and spending:

"What are the chief sources of expense in every government? What has occasioned that enormous accumulation of debts with which several of the European nations are oppressed? The answer plainly is, wars and rebellions; the support of those institutions which are necessary to guard the body politic against these two most mortal diseases of society. The expenses arising from those institutions which are relative to the mere domestic police of a state, to the support of its legislative, executive, and judiciary departments, with their different appendages, and to the encouragement of agricultures and manufactures (which will comprehend almost all the subjects of state expenditures) are insignificant in comparison with those which relate to the national defense."

16. Banking and government have always been highly intertwined; indeed, Hamilton was updated a century and a half later by The Committee on Public Debt Policy, Our National Debt. Appended are pp66-67, during World War Two banks shifted from private loans to investment in government securities; pp71-73, bank profits rose substantially during the war; and pp154-155, philosophy of big government and shifting financial burdens to Washington threatens big spending. As set forth in the parallel MOTION FOR PRIORITY..., ¶¶10-22, in the previous decade or so there had been a major philosophical shift in court decisions to "spending ourselves rich."

17. If there seems to be no systematic survey of judges owning bank stocks, it does seem by anecdotal evidence to be a common practice among federal judges over the past couple centuries or so. In Bank of North America v. M'Knight, 2 Dall, 158, six of the seven members of the Pennsylvania Supreme Court disqualified themselves on grounds of owning stock in that same bank.

18. Wendt encountered a number of trial and appellate judges owning bank stocks in the course of defending a draft case over a third of a century ago, that the draft is unconstitutional. (Case TH-68-CR-36, Southern District of Indiana, without which he could have easily gone through life without learning to use a law library) He sought to disqualify them for profiting from the war. While a disqualification petition (Case 17586, 7th Circuit) was pending in this Court to have judges disqualified for owning bank stocks, the trial court issued a warrant for Wendt's arrest, for which there was never an explanation. The entire affair thoroughly disrupted Wendt's impressionable first decade of adult life and most certainly left a lasting impression of the federal judiciary, as his litigation should corroborate.

19. The Ethics in Government Act, 5 App USC 100 *et.seq.,* requires federal judges to disclose their financial interests, but §105 also requires rather a cumbersome procedure for the public to obtain them. An Internet news service tried to obtain these documents for posting on a web site, but was unable to obtain them because of "security" concerns. Wendt recalls a news item a quarter century ago about a lawsuit brought by federal judges objecting to this Act for the same reason. For problems with disclosure of these documents and problems uncovered with disclosure, see the websites APB News.com;http://starbulletin.com;http://www.kcstar.com/judges;http://www.startribune.com/westpub/disclose.htn.

20. On the one hand there is nothing the courts can do to curb excessive spending within legitimate constitutional power, Duke Power Co. v. Greenwood County,

S.C., 10 F. Supp. 854, 871, that superb statement of pre-FDR "old law" and rebuttal to what followed. On the other hand, there is still no legitimate constitutional power to inflate the currency, thus to facilitate excessive spending, regardless of Supreme Court decisions to the contrary. Hammond's Chapter 4, a history of the monetary clause, shows an original hard money intent, but has no difficulty discerning what happend to it in the U.S. Supreme Court, pp109-110:

"...These decisions removed whatever constitutional inhibitions ever existed upon the power of Congress to authorize anything it wishes as money. Thus, in the course of 150 years, changes in monetary and business habits, in governmental responsibility, in statutes, and in jurisprudence have strengthened the Constitution's ban on issues of money by individual states but have nullified completely the original intent that the federal government should have no power to make anything but the precious metals legal tender.

"... One can either consider the departure from the original intent a calamity or hold that the original intent, though wise at the time, could not possibly endure...."

21. Not that banking creates the only pervasive, permanent conflict of interest or interest in paper money, nor that court-packing schemes originated with FDR, nor that enumerated powers had never been exceeded prior to FDR. The pivotal decision establishing paper money as an "inherent" power of government, over strenuous dissents, Legal Tender Cases, 79 U.S. (12 Wall.) 287, reversed a previous decision barely a year old, which had held the Civil War greenbacks unconstitutional. By Gustavus Myers, History of the Supreme Court, pp514-524, in between two railroad lawyers were appointed to the Court. Railroad expansion at the time depended on issues of paper money (as much unwise corporate expansion always has, in the railroad industry contributing to an overcapacity problem for over a century). The reversal expressly upheld paper money issue as a war power, 12 Wall. at 540-541.

22. There is a long-running debate among proponents of "spending ourselves rich" whether the "G" in "C+I+G" expenditures need be military. Paper money financing, of course, in recent decades known as "regulation of aggregate demand," is taken for granted, After a chapter in his standard economics text arguing it need not be military, Paul Samuelson's standard economics text asked students to evaluate the New Left charge, *"O.K., so Keynesian macroeconomics can restore prosperity by Vietnam spending. But why should we tolerate 'Keynesian-militarism'? and then show why 'Keynesianism-welfarism' would be as legitimate an epithet."* Economics, 8th ed., McGraw-Hill, N.Y., p817

23. A recurring theme of the "spend ourselves rich" cases (cited in MOTION FOR PRIORITY..., ¶¶10-22) is that exercise of such power is not debilitating. Exercise of the power to "spend ourselves rich" has its heady consequences nevertheless, whether by new or old powers, if rather diametrically opposite for the traffickers in government debt and everyone else. If only to show the danger of promoters of and traffickers in debt making public policy, let's look at the consequences of "regulation of aggregate demand," as picturesquely described by perhaps its most prominent exponent:

"The Nazis were not given to books. Their reaction was to circumstances, and this served them better than the sound economists served Britain and the United States. From 1933, Hitler borrowed and spent- and he did it liberally as Keynes would have advised. It seemed the obvious thing to do, given the unemployment. At first, the spending was mostly for civilian works- railroads, canals, public buildings, the Autobahnen. Exchange controls then kept frightened Germans from sending their money abroad and those with rising incomes from spending too much of it on imports.

"The results were all a Keynesian could have wished. By late 1935, unemployment was at an end in Germany. By 1936, high income was pulling up prices or making it possible to raise them. Likewise wages were beginning to rise. So a ceiling was put on both prices and

wages, and this too worked. Germany, by the late thirties, had full employment at stable prices. It was, in the industrial world, an absolutely unique achievement..

"The German example was instructive but not persuasive. British and American conservatives looked at the Nazi financial heresies- the borrowing and spending-and uniformly predicted a breakdown.Only Schacht, the banker, they said, was keeping things patched together. (They did not know that Schacht, so far as he was aware of what was happening, was opposed,) And American liberals and British socialists looked at the repression, the destruction of the unions, the Brownshirts, the Blackshirts, the concentration camps, the screaming oratory, and ignored the economics. Nothing good, not even full employment, could come from Hitler..."

"The war then brought the Keynesian remedy with a rush. Expenditures doubled and redoubled. So did the deficit....

"There is another way of looking at this history. Hitler, having ended unemployment in Germany, had gone on to end it for his enemies. He was the true protagonist of the Keynesian ideas.

"The war revealed two of the enduring features of the Keynesian Revolution. One was the moral difference between spending for welfare and spending for war. During the Depression very modest outlays for the unemployed seemed socially debilitating, economically unsound. Now expenditures many times greater for weapons and soldiers were perfectly safe. It's a difference that still persists."

"... Keynesian support to the economy has come to involve heavy spending for arms..."

"`There is agreement even in high military circles that the naked weapons competition cannot go on. Some will ask the hard question, what will take its place? What of the jobs it provides? What will replace the purchasing power it creates? ... in the post-Keynesian world, weapons expenditures- the cycle of design, production, obsolescence, replacement- have served... I once called it military Keynesianism.

"All candid economists concede the role of military expenditures in sustaining the modern economy. Some have held that expenditures for civilian purposes- health, housing, mass transport, lower taxes leading to more private consumption- would do as well. The transition would be rather easy.

"Tbis ignores the entrapment. And it ignores the economic power that sustains the trap and keeps it shut. Behind a new manned bomber is the military and industrial colossus we have been here examining. It is strong and resourceful in defending its interest, and we may assume that it is strong and resourceful in the Soviet Union too. Back of the improved housing and cities there is no similar power as there is no similar competition. There is only, by comparison, a vacuum.

"One should also observe that there is a problem of magnitudes. For the price of a smallish fleet of manned supersonic bombers, a modern mass transit system could be built in virtually every large city large enough to have a serious bus line. What would be built then?" John Kenneth Galbraith, The Age of Uncertainty, Houghton Mifflin Company, Boston, 1977, pp213-214, 221, 226, 255

24. Alexander Hamilton being the foundation of legitimacy the past several decades in constitutional law, here is a most timely Hamiltonian view of conflicts of interest in Federalist 6:

"The causes of hostility among nations are innum-erable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power or the desire of pre-eminence and dominion- the jealousy of power, or the desire of equality and safety. There are others which have a more circumscribed though an equally operative influence within their spheres. Such are the rivalships and competitions between commercial nations. And there are others, not less numerous than either of the former, which take their origins entirely in private passions; in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members. Men of this class,

whether the favorites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquility to personal advantage or personal gratification.

"The celebrated Pericles, in compliance with the resentments of a prostitute, at the expense of much of the blood and treasure of his countrymen, attacked, vanquished, and destroyed the city of the Samnians. The same man, stimulated by private pique against the Megarensians, another nation of Greece, or to avoid a prosecution with which he was threatened as an accomplice in a supposed theft of the statuary of Phidias, or to get rid of the accusations prepared to be brought against him for dissipating the funds of the state in the purchase of popularity, or trom a combination of all these causes, was the primitive author of that famous and fatal war, distinguished in the Grecian annals by the name of the Peloponnesian war; which, after various vicissitudes, intermissions, and renewals, terminated in the ruin of the Athenian Commonwealth."

25. The federal courts are commonly revered for dealing with such issues as school desegregation, one man-one vote, Miranda rights, and such, if it has been several decades since any decision of that stature has come down. Note that such decisions are well within the "strict scrutiny" orbit of that famous footnote 4 of U.S. v. Carolene Products, 304 U.S. 144, 152. Outside that orbit, however, in the realm of economic issues, the courts have abdicated completely. Then people wonder why there is such slopping at the public trough and such a growing disparity of wealth. Wendt had occasion to note in his Univ. of Illinois case that the greater thief had asserted its supremacy over the widely reputed but far lesser thieves of Maxwell St. What John Locke wrote some three centuries ago, however, applies far more to the federal courts curbing the lesser thieves under "strict scrutiny" but letting the greater ones run hog wild under the lesser, nonexistent sort:

"... great robbers punish little ones to keep them in their obedience, but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world and have the power in their hands which should punish offenders..." Second Treatise of Government, ¶176

PATRIOTIC SELF-SACRIFICE

26. Wendt's only hope, it would seem, of any reasonably thorough, non-selective application of law to fact in this matter is patriotic self-sacrifice on the part of the federal judges hearing it, indeed, *"... the spirit of a martyr..."* Thus they might themselves live up to the standards of patriotic self-sacrifice that the federal courts have often urged upon others except that Wendt cannot countenance the sacrifice of basic principles demanded below. This is indeed for higher purposes than military security the courts have recognized at least once:

"... Mr. Blackmer left the United States in 1924, when it must have been apparent to him that his testimony might and probably would be sought by the government in the attempt to uncover the fraud and corruption culminating in the oil and gas lease to the Mammoth Oil Company. Later, letters rogatory were issued, but Blackmer refused to testify and could not be coerced. His hostile attitude and his disinclination to fulfill his public duty became apparent. When his testimony was sought in the criminal case involving substantially the same facts, he refused to respond to the subpeonas, and attempted to justify his conduct by challenging the constitutionality of the act under which the subpeonas were issued. He knew, or should have known, that it was as much his patriotic duty to yield his testimony in the government's efforts to uncover fraud and punish the guilty as it would be his duty to bear arms in the defense of his country. Indeed, the injury to the government resulting from the failure of a material witness to testify might be infinitely greater than that resulting from his refusal to bear arms, and, yet, the citizen 'may be compelled, by force if need be, against his

will and without regard to his personal wishes or his pecuniary interests, or even of his religious or political convictions, to take his place in the ranks of the army of his country, and risk the chance of being shot down in its defense.' Jacobson v. Massachusetts, 197 U.S. 11, 29" Blackmer v. U.S., 49 F.2d 523, 532-533 (1932)

Wherefore, William F. Wendt, Jr., Plaintiff-Appellant, pro se, moves for adjudication of this case in the spirit of patriotic self-sacrifice.

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(excerpts from the appendix) The Committee on Public Debt Policy, Our National Debt: Its history and its meaning today, Harcourt, Brace and Compzny, Inc., 1949

We have seen how commercial bank holdings of government obligations expanded by 73 billion dollars during the war, while private loans rose only nine billion. When 1940 began, government securities comprised 40 percent of all bank loans and investments; by the end of 1945, the ratio had nearly doubled to 73 per cent. The banks had become more investment institutions in government securities than lending institutions to private enterprise. pp66-67

Their expanded holdings of government securities and loans enabled banks to more than cover the large wartime increase in operating expenses and taxes. As a result, their net operating earnings rose during the war and postwar years and by 1947 were more than 80 per cent above what they were before the war. Table 7 reveals profits and losses from 1934 through 1947. pp71-72

No matter how successful efforts are to get more efficient performance, the thousand and one functions now asked of government will keep our big budget big.

Only by limiting the number of things we ask government to do, can we hope to control government spending.

This problem gets down to a philosophy of government. What do the people expect from the Federal Government? How much shall be left to individuals, to outside institutions, to the State and local governments? Education, for example, has always been a State and local function. The local school board has been a typically American institution. Now we hear much of the responsibility of the Federal Government in these matters. Pressure grows to shift more and more of the financial load to the Treasury in Washington. Thus does "big government" grow bigger. Inevitably "big government" means big spending.

Big government means big taxing, with the smothering of enterprise. It means also a further substitution of government planning and doing for what the people plan and do for themselves. Some of this extension of government authority has been unavoidable as our society has become more complex. It has crept up on us step by step almost without our realizing it. Much of it was not necessary, but developed because of the instinct, too common in all classes, to run to government at the first sign of a difficult problem. And this instinct has been exploited by certain small but active groups who want to change the nature of our government.

To cut down and keep down government spending requires a philosophy of limiting the scope of federal power, as envisioned by the framers of the American Constitution. Unless we have such a philosophy, the tendency is to add one function after another. Thus the budget grows bigger and bigger, which not only makes national debt management vastly more difficult, but leads us far afield from the individual liberty and democracy on which this country has been built...

pp-154-155

(cover page omitted; parties as on 64a)

IN THE 7th CIRCUIT COURT OF APPEALS

No. 03-1403

WILLIAM F. WENDT, Jr.,	)	
Plaintiff-Appellant, Pro Se	)	No. 02C7779
v.	)	Judge
WILLIAM REHNQUIST, FRANK)		KOCORAS
EASTERBROOK, WAYNE	)	Magistrate
ANDERSEN, SAMUEL BROOKS,	)	Judge
et. al., Defendants-Appellees	)	SCHENKIER

MOTION FOR PRIORITY OVER CASES ENFORCING UNCONSTITUTIONAL, OVERLY HAMILTONIAN LAWS

William F. Wendt, Jr., Plaintiff-Appellant, pro se, moves that priority be given this case over those brought under overly Hamiltonian, unconstitutional laws. In support he offers as follows:

ACCESS TO COURTS INFRINGED BY EXCESSIVE LITIGATION

1. There is judicial recognition of infringement of the right of access to the courts by spurious cases and dilatory tactics. If the onus for "litigation concerning litigation" properly belongs on courts that fail to resolve disputes the first time around (at least in some instances, including this one), still judicial concern for "litigation concerning litigation" and shotgun pleadings shows a right of access to the courts, one now impeded by spurious cases and tactics:

"The (Pennsylvania Supreme Court) also expressed its disfavor of 'litigation concerning litigation:'

'Particularly troublesome to the efficacy of the courts are these 'second bite' cases; they require twice the resources as a single case, yet resolve only a single litigant's claims- thus denying access to the courts to litigants who have never had a single resolution of their dispute. For that reason, henceforth we should view "litigation concerning litigation" cases with a jaundiced eye.'(cite)

As noted by the Pennsylvania Supreme Court, the policy of avoiding 'litigation concerning litigation' is aimed at

preserving resources and allowing access to the courts by other litigants..." Wassall v. DeCaro, 91 F.3d 443, 446-447 (3rd Cir. 1996)

"In addition to watering down the rights of the parties to have valid claims litigated efficiently- whether the plaintiff's or the defendant's- shotgun pleadings wreak havoc on the judicial system. Cases framed by shotgun pleadings consume an inordinate amount of a court's time. As a result, justice is delayed, if not denied, for litigants who are standing in the queue waiting to be heard. Their impression of the court's ability to take care of its business can hardly be favorable. As the public becomes aware of the harm suffered by the victims of shotgun pleadings, it, too, cannot help but lose respect for the system. Moreover, the consequence of a trial court's inability, or apparent unwillingness, to halt the use of shotgun pleadings may prompt parties to turn to non-judicial forums to resolve their disputes.

"Shotgun pleadings, if tolerated, harm the court by impeding its ability to administer justice. The time a court spends managing litigation framed by shotgun pleadings should be devoted to other cases waiting to be heard. '[W]ast[ing] scarce judicial and parajudicial resources... impedes the due administration of justice' and, in a very real sense, amounts to obstruction of justice. (citations)" Byrne v. Nezhat, 261 F.3d 1075 (11th Cir. 2001), 1130-1131

EXCESSIVE LITIGATION RESULTING IN UNPUBLISHED OPINIONS

2. There is indeed a spiraling workload of the federal courts, restricting access and obstructing justice, for which, as we will see, the courts have themselves largely to blame. Thus, also, the unpublished opinion, which has become something of an institution in itself, such as the order entered December 19, 2002 dismissing this case as "factually frivolous" and the 7th Circuit orders in Wendt's two previous cases. Chief Judge Boyce F. Martin, Jr., U.S.C.A., 6th Cir., In Defense of Unpublished Opinions, 60 Ohio State Law Journal 177 (1999), attributes this workload to statutes, 181, increased size of

appellate documents, 182, and increased ratio of appeals taken, one in forty in 1945, one in eight in 1988, 183.

3. Martin's attribution of the spiraling case load in part to statutes, *ibid,* p181, was, interestingly enough, not quite four decades after Charles Black, The People and the Court, 1960 (as reissued 1968) p76, wrote, rather congruently,

"On this point we are all Hamiltonians today. If Jefferson had actually won out, and if his view had been consistently followed, there would have been no T.V.A.- but, alas for those who would count this loss a gain, there would have been no F.B.I. Neither of these institutions could conceivably be justified on a strict construction of the 'necessary and proper' clause. The Federal Reserve System would have been an impossibility. There could have been no Interstate Commerce Commission, no federal control of marijuana. Investigations by committees of Congress would have been out of the question, insofar as these rest on the power to subpeona witnesses and documents, for such a power is nowhere mentioned in the Constitution. The federal organization would have possessed a number of scattered and discontinuous paper powers, some important and some trivial, but it could never have been formed into a workable whole. Without the 'necessary and proper' clause, liberally construed on Hamiltonian lines, there could have been no Government of the United States."

UNCONSTITUTIONAL STATUTES CAUSE EXCESSIVE LITIGATION

4. Now Wendt is not so extremely Jeffersonian that he could not see subpeona power as "necessary and proper" to the legislative power, as abusable as this power can be, nor an agency to investigate those felonies Congress indeed has a power to punish, as abusable as that power can be, but he is quite Jeffersonian enough to see the rest of Black's indispensables as dispensable. For the purposes of this case, suffice to say,

1) "federal control of marijuana" and other drugs presently places a very heavy burden on the federal

courts, at least in part resulting in unpublished opinions, and

2) if the federal government needed a constitutional amendment to prohibit alcohol, it would need another one to prohibit other drugs. In that sterling, astoundingly timely, so far unrebutted statement, as far as Wendt knows, of pre-1930s, pre-threat of court-packing "old law," Duke Power Co. v. Greenwood County, S.C., 10 F. Supp., 854, 871, we find, original emphasis:

"... Congress had no power, under the general welfare clause, *to prohibit traffic in intoxicating liquors, not to provide punishment for abuses thereof, until the adoption of the Eighteenth Amendment, prior to which its only powers were based upon the revenue laws, under which alone it is likewise permitted to regulate the traffic in opium..."*

5. Wendt is not in a position to tabulate the caseload generated directly by federal drug laws nor indirectly by the "war on drugs" through hideous forfeiture laws and such, but it is obviously considerable, and a major contributor to the judicial overload resulting in unpublished opinions.

6. Wendt trusts judicial notice should be sufficient to establish a heavy judicial workload due to drug laws, personal income tax, and other extremely if not impossibly complicated laws.

7. Moreover Martin wrote about proliferating statutes over two centuries after James Madison offered grounds to declare impossibly complicated laws unconstitutional in Federalist 62:

"The internal effects of a mutable policy are still more calamitous. It poisons the blessings of liberty itself. It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow..."

"... Every new regulation concerning commerce or revenue... presents a new harvest to those who watch the change, and can trace the consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow citizens. This is a state of affairs in which it may be said with some truth that laws are made for the few, *not for the* many." (original emphasis)

8. If Wendt is presently unable to offer a list of impossibly complicated statutes, it is easy enough to show that U.S. v. Cheek, 498 U.S. 192, 199-200, recognized the Internal Revenue Code as one example. Sometimes ignorance of the law is indeed an excuse. The IRC, of course, is the one most embroiled in daily life and undoubtedly the one that generates the most litigation.

9. In Federalist 34 Alexander Hamilton gave his truly Hamiltonian, pre-ratification ideas on the proper scope of government spending, even under the general grant of powers in state or foreign governments:

"What are the chief sources of expense in every government? What has occasioned that enormous accumulation of debts with which several of the European nations are oppressed? The answer plainly is, wars and rebellions; the support of those institutions which are necessary to guard the body politic against these two most mortal diseases of society. The expenses arising from those institutions which are relative to the mere domestic police of a state, to the support of its legislative, executive, and judiciary departments, with their different appendages, and to the encouragement of agricultures and manufactures (which will comprehend almost all the subjects of state expenditures) are insignificant in comparison with those which relate to the national defense."

10. In the 1930s, however, the federal courts held constitutional, largely but falsely in Hamilton's name, an "emergency" power to "spend ourselves rich" on matters not enumerated in Article I, §8. In Federalist No. 7, discussing the causes of domestic strife, Hamilton also left a hint, obviously overly subtle, of what would

happen if the floodgates of government spending were loosed, in particular on national funding of local projects such as challenged in Wendt's previous case:

"... There is, perhaps, nothing more likely to disturb the tranquility of nations than their being bound to mutual contributions for any common object that does not yield an equal and coincident benefit. For it is an observation, as true as it is trite, that there is nothing men differ so readily about as the payment of money."

11. In a chapter of Public Policy and the General Welfare (1941), Charles Beard trumpeted a newly found power, for all practical purposes, to "spend ourselves rich" in Helvering v. Davis, 301 U.S. 619, regarding Social Security, Greenwood County, S.C. v. Duke Power Co., 81 F.2d 986 and Kansas City Gas & Electric v. Independence, Kan., 79 F.2d 32, regarding federal assistance to electric power plants, and Atty. Gen. Op., Vol. 38, Aug. 1935, regarding housing. Expenditures obviously local in nature gained a national dimension through the federal power of the purse. As an emergency measure to deal with the Great Depression, Social Security was held constitutional on this basis alone, an "emergency" measure in effect for close to seven decades now. If long the "third rail" of American politics, touch it and you die, over the past decade or so it has come to be recognized as likely causing its own emergency in the next decade or two. Indeed, in late February 2003, no less than Federal Reserve Chairman Alan Greenspan warned that Social Security may become unsustainable. Social Security generates considerable litigation, of course, having its own administrative courts, with appeals to Circuit Courts. Who knows, if the political process proves no more able to deal with Social Security than with Jim Crow prior to 1954, the courts might have to undo their own damage.

12. Any passing familiarity with the affairs of the Chicago Housing Authority quickly leads to federal court, where many major or not so major management decisions are made or remade. Wendt asked the CHA board at its October 2002 meeting how much of its policy

is federally dictated, shortly after hearing an extended radio interview with its executive director; at the November meeting CHA supplied a document with this question and answer:

"William Wendt: Understood from Mr. Peterson's comments, that the CHA Transformation Plan is being dictated by Federal Government. What kind of discretion does the Board have to follow or not to follow this Federal Plan.

"The CHA must follow HUD regulations regarding all operations, financial practices, procurement and other key areas. In order to accomplish the goals of the Plan for Transformation, CHA received waivers from HUD from certain regulations through the Moving to Work Agreement, allowing for some flexibility. However, HUD continues to oversee our progress through the CHA's annual report and annual plan."

13. If there seems to be no extended ruling discussing the constitutionality of federal involvement with housing, United States v. Emory, 314 U.S. 423, 430 did hold the purpose of the National Housing Act was to "spend ourselves rich." City of Cleveland v. United States, 323 U.S. 329, 333 held it constitutional in a footnote of citations to three cases upholding an expanded interpretation of the Taxation and Appropriation Clause, a footnote as deserving of notoriety as the much bruited Footnote 4 of U.S. v. Carolene Products, 304 U.S. 144, 152.

14, The first case cited is U.S. v. Butler, 297 U.S. 1, 63-67, holding an expanded interpretation of the Taxation and Appropriation Clause allows Congress to fund national but not local projects. After the government's motion to dismiss Wendt v. Slater/Mineta described a federal program to fund local transportation projects, Wendt moved for summary judgment on this factual basis to hold the program unconstitutional under Butler. This motion has yet to be ruled upon, over Wendt's most strenuous objections, including this case.

15. The second case is Chas. Steward Machine Co. v. Davis, 301 U.S. 548, 586, upholding unemployment

compensation, which holds an "emergency" power to "spend ourselves rich" gives a national dimension to otherwise local spending.

16. The third case is Helvering v. Davis, 301 U.S. 619, 640, the Social Security case, holding it is for Congess, not the courts, to decide, whether "spending ourselves rich" is national or local, unless the choice is clearly wrong, going Steward one better and contradicting Butler.

17. Wendt's understanding of urban renewal history leads him to believe that the real purpose of public housing is housing for those displaed by urban renewal; the real "emergency" behind public housing in Chicago is the dread felt by institutions such as the University of Chicago, at which defendants Posner and Easterbrook are professors, of having poor blacks in the neighborhood. The University of Chicago was a principal influence for the passage of state and federal "conservation" laws, of the same dubious constitutionality on the federal level. Federal spending on urban housing, public transportation, and highways has been one disaster after another, at least in Wendt's humble or not so humble opinion.

18. If there is yet no annotation on the presumably constitutional, by these lights, 12 USC 1701r, merely the headings and sub-headings show the inexorable consequences of unconstitutional federal involvement in local matters, ripe for adjudication in federal courts instituted for affairs of broad national importance:

Pet ownership in assisted rental housing for the elderly or handicapped

(a) Restrictions on ownership

(b) Rules and regulations

(c) Removal of pets constituting a nuisance

(d) "Federally assisted rental housing for the elderly or handicapped" defined

19. The annotations to the Urban Mass Transit Act, 49 USC 5301 et.seq., the same act Wendt challenged as unconstitutional, are cases largely brought by parties with their hands out. If several cases hold the act does

not create a private right of litigation, there is considerable litigation over the labor protection provisions.

20. Ward v. Massachusetts Bay Transp. Authority, 550 F. Supp. 1310, 1312 (1982) held the purpose of the Urban Mass Transit Act was not employment. Not only is this "national" claim forgone, but the first section makes only the barest reference to any sort of "national" interest, most of the act explicitly referring to local matters. Such is the decline of even the most abdicating constitutional standards.

21. Just to scratch the surface of litigation under the "expanded" notions of interstate commerce, we find in John Flynn, The Decline of the American Republic:

"... In the case of (NLRB v. Friedman-Harry Marks Clothing Co., 301 U.S. 58) in 1937, the Court held that the business of making clothes must be considered as a whole- it must be looked upon not as an activity by one small manufacturer, but as an industry in which thousands of big and little producers are engaged in a number of states.... If this is true there is no commerce which is not interstate..." p111

"... This one firm was clearly in interstate commerce. But in this case (A.B. Kirschbaum v. Walling, 316 U.S. 517 (1942)), Justice Frankfurter, for the Court, held that not only was the clothing firm in interstate commerce, but the building in which it was just one tenant was also in interstate commerce and thus subject to federal legislation..." p112

"In a later decision (Borden v. Borella, 325 U.S. 679 (1945)) this Court held that this same authority applies to porters, elevator operators and watchmen in another office building. If there is anything in this world that is utterly local and out of even the 'stream of interstate commerce' it is an elevator operator in a local office building who travels up and down from one floor to another rather than back and forth across state lines." p112-113

22. The third article in the various Handbooks for Congress issued by the Cato Institute is an extensive complaint about the federal courts removing any restric-

tion on Congressional power under the General Welfare and Interstate Commerce Clauses, if not listing all the voluminous legislation thus left on the books and cluttering the courts. With a more extensive historical account, the article in the Handbook for the 104th Congress updates Hamilton by two centuries, the strife, of course, spilling out of the legislative halls into the temples of justice:

"Today, of course, the redistributive powers of Congress are everywhere- except in the Constitution. The result is the feeding frenzy that is modern Washington, the Hobbesian war of all against all as each tries to get his share and more of the common pot the tax system fills. That must be ended. It is unseemly and wrong. More than that, it is unconstitutional, whatever the slim and cowed majority of the New Deal Court may have said..." Roger Pilon, "A Government of Limited Powers," Cato Handbook for Congress: Policy Recommendations for the 104th Congress, p23

23. Publishing decisions, however, does not absolutely guarantee they will not ignore binding precedent. In 1990 Montana attorney Jeffrey Dickstein published Judicial Tyranny and Your Income Tax, ISBN 0-9626379-0-4, analyzing some six dozen federal cases rejecting the "wages not income" argument without ever actually answering it, that "income" is derived only from governmental privelege of some sort, not from activity done as natural right. The cases consist largely of sweeping generalizations, utter irrelevancies, kited citations, outright name calling, and at least one out of context quotation of a U.S. Supreme Court decision. The "wages not income" argument is rather elaborate and forceful, largely based upon U.S. Supreme Court decisions from about 1890 to 1920 and debates on the 16th Amendment, and has been responsibly presented dozens of times by competent counsel since the mid-1970s. If there is a genuine rebuttal to this argument, Wendt has yet to hear it. Personal income tax cases still clutter the courts nevertheless, taking the taxpayers' hard earned

compensation as abusively as it is spent, and, for purposes of this case, hampering access to the court.

24. If draft litigation is a mere trickle now, figure that draft cases flooded the courts in the late 1960s and early 1970s when unpublished decisions became established practice. If the constitutionality of the draft has been at least twice put "beyond question," Lichter v. United States, 334 U.S. 742, 755-758; United States v. O'Brien, 391 U.S. 367, 377, it would not, however, be at all correct to call it "overly Hamiltonian." From passages in Hamilton's Federalist 22, 24, 25, 28 and 29, Madison's 46, a discussion in the Federal Convention, and discussions in the debate on the Second Amendment, we can see that when the framers said "raise and support Armies," they meant paid, professional armies. There is compulsory military service, but under the militia clauses, which is most certainly not designed to render the citizen a mindless tool of the government. Story's Commentaries on the army and militia clauses and the Second Amendment, discovered in the course of researching the previous case, corroborate this position. If draft litigation today is but a trickle, there is still considerable gun litigation that could be avoided under this constitutional realization, plus a lot of gun crime and mishaps to begin with. There is a flat contradiction between Perpich v. DOD, 496 U.S. 334, 345-346, that militiamen can be drafted into the army, on the one hand, and, on the other, 1) Federalist 46, that the militia are a check upon the army, 2) Elbridge Gerry's objection in the debate in the First Congress on the Bill of Rights that a conscientious objector clause might serve as a pretext to exclude people from the militia, thus to build a standing army on its ruins, and 3) the plain meaning of the Second Amendment, plain, that is, once one understands the subtle changes in semantics over two centuries.

25. At 10 AM, February 19, 2003, Wendt was refused entry to the federal courthouse at 219 S. Dearborn for not showing a photo ID. As developed in the accompanying MOTION FOR NORMAL ACCESS TO THE COURT, this violates his First Amendment rights of

access to court proceedings. Wendt objects to having to give a Social Security number to get a photo ID, this getting too close to a South African passbook. Here is another source of litigation over Social Security.

DEBILITATING EFFECTS OF CONSTITUTIONAL INFIRMITIES

26. A recurring theme of the "spend ourselves rich" cases is that such spending is not debilitating. Au contraire. Hamilton being the touchstone of constitutional legitimacy the past several decades, here's the Hamiltonian view of threat-debilitated mentalities in Federalist 8, if the "emergency" these same past several decades in the world's only superpower is still more economic than physical, but still as debilitating:

"... The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated over the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors but as their superiors. The transition from this disposition to that of considering them masters is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions to make a bold or effectual resisiance to usurpations supported by the military power."

27. For whatever reason, intellectual respectability gets rather scarce in the federal courts these days, laughable indeed, if one's sense of humor runs that way:

"A perfect, if somewhat comical, example of what the bifurcation doctrine has become can be found in the Supreme Court's June 1994 Turner Broadcasting *decision, which yielded no fewer than five separate opinions and many more cross-concurrences and dissents, all by way of deciding whether the Cable TV Act of 1992 was*

constitutional. Being both speech and commerce, like everything elsie in life, cable TV presented a problem for the bifurcation theory. What emerged from the decision, therefore, was not two but four 'levels' of judicial review: newspaper regulation gets strict scrutiny; regulation of 'mere' commerce gets minimal scrutiny; between those, broadcast regulation gets 'relaxed' scrutiny; cable regulation gets scrutiny somewhere between relaxed and strict. If constitutional law is no longer understood by the layman, neither does the Constitution seem any longer to be understood by the Court." Roger Pilon, "A Government of Limited Powers," Cato Handbook for Congress: Policy Recom'dations for the 104th Congress, p33

28. The federal courts are often lauded for dealing with such issues as school desegregation, one man-one vote, Miranda rights, and such, even if no such groundbreaking decision has come down for several decades. These, however, are well within the "strict scrutiny" orbit of that famous footnote 4. Outside that orbit, in the realm of economic issues, the courts have abdicated completely. Then people wonder why there is such a growing disparity of wealth. Wendt had occasion to note in the Univ. of Illinois case that the greater thief had asserted its supremacy over the reputed but far lesser thieves of Maxwell St. What John Locke wrote some three centuries ago, however, applies far more to the federal courts curbing the lesser thieves under "strict scrutiny" but letting the greater ones run hog wild:

"... great robbers punish little ones to keep them in their obedience, but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world and have the power in their hands which should punish offenders..." Second Treatise of Government, ¶176

29. As late as 1960, Black, ibid, p52, could still write that curbing unconstitutional statutes was the key to governmental legitimacy:

"But a case can be made for believing that the prime and most necessary function of the Court has been that of VALIDATION, not that of invalidation.

What a government of limited powers needs, at the beginning and forever, is some means of satisfying the people that it has taken all steps humanly possible to stay within its powers. That is the condition of its legitimacy, and its legitimacy, in the long run, is the condition of its life. And the Court, through its history, has acted as the legitimator of the government. In a very real sense, the Government of the United States is based on the opinions of the Supreme Court." (original emphasis)

30. Otherwise, Black says,pp42-43, dangerous disaffection could result, at least if not displaced by some sort of Hamiltonian "threat mentality," Federalist 8(¶26):

"Intricate and perplexing, then, are the problems that confront the government of limited powers, as it faces the task maintaining among its citizens an adequately strong feeling of the legitimacy of its measures, of their authentic governmental character as distinguished from their debatable policy and wisdom. But the price of failure may be very high. For it is inherent in government that it must continually generate discontent. Its business, in all its branches, is to mediate and judge conflicting claims. The bungled mediation may leave one group howling in rage and pain, but even the brilliantly successful mediation may leave all sides grumbling over the half loaf. In this situation, the absence of feeling of legitimacy may set up a vicious circle. First, discontent is likely to be greater if the disappointed group can plausibly believe that the action they object to was not only unwise and wrong but also completely unauthorized and usurpative. Most of us know, whether or not we choose to admit it, that a fair and wise decision is not always to be looked for, but we are especially outraged if what we think to be an unwise or unfair decision is imposed on us forcefully by someone whom we believe to have no power over the matter at all. But the expression of those feelings, and their support by argument, must in turn weaken the public feeling that the actions of government are, even if unwise, legitimate governmental actions, and the ground is even better prepared for the next occasion on which someone vents

his disappointment by attacking the legitimacy of a governmental measure.

"In the end, I think, the supreme risk run is that of disaffection and a feeling of outrage widely disseminated throughout the population, and loss of moral authority by the government as such, howeverlong it may be propped up by force or inertia or the lack of an immediately available alternative. Almost everybody, living under a government of limited powers, must sooner or later be subjected to some governmental action which as a matter of private opinion he regards as outside the power of government or positively forbidden to government. A man is drafted, though he finds nothing in the Constitution about being drafted, and though he knows there was no draft when the Constitution was adopted, or for a long lifetime thereafter. A farmer is told how much wheat he can raise; he believes, and he discovers that some respectable lawyers believe wirh him, that the government has no more right to tell him how much wheat he can grow than it has to tell his daughter whom she can marry. A man goes to the federal penitentiary for saying what he wants to, and paces his cell reciting, 'Congress shall make no law abridging freedom of speech.' A couple who sincerely and plausibly believe that the Constitution placed religion outside the power and concern of government find that their child is being subjected to 'Bible reading' in the public school he attends and that part of the taxes they pay go, in indirect ways, to subsidize religious instruction. A businessman is told what price he can ask, or must ask, for buttermilk.

"The danger is real enough that each of these people (and who is not of their number?) will confront the concept of governmental limitation wirh the reality (as he sees it) of the flagrant overstepping of actual limits, and draw the obvious conclusions as to the status of the government with respect to legitimacy. It is tempting to follow the fashion and say that we cannot afford, in the world of today, that kind of wreckage of the moral authority of government. But of course we

couldn't afford it in the world of any day. The task of persuading the greater part of our people that the principles of government limitation have been adhered to, notwithstanding differences of private opinion, is and always has been one of great urgency.

"The problem, as I indicated above, never can have a complete solution..."

31. In his analysis of political frustrations, but having himself far from the sentiments described here, Michael Lazare observed a precipitous decline in perceived legitimacy in The Frozen Republic, p305, in large part attributable, as Wendt sees it, to the handling of income tax cases, above:

"... The more unsettled conditions became, the more power and influence passed from bishops and profesional theologians into the hands of half-educated 'mechanic preachers' who held forth in alehouses and roamed the ranks of Cromwell's Army, firing up the troops with the glory of God. In the unsettled 1990's, similarly, influence seems to be passing from federal judges and law professors to homespun constitutional exegetes whose paranoid writings are now flooding the Internet and stirring up militia members in places like Idaho and Montana..."

DEBILITATING FORCE OF JUDICIAL HABIT

32. Not that Wendt is the first to notice higher priorities in the courts than written law. Joyce J. George, Judicial Opinion Writing Handbook, Third Edition, p427, who, in twenty-five words or slightly more, put her finger on what seems to go wrong in the judicial process, which is quite consistent with the institutional laziness of unpublished decisions:

"... Repetition of intuitive concepts and accidental practices becomes habitual and these habits eventually are transformed into rigid traditions. Once so transformed, these traditions become unchallengeable truths. Since it has always been done that way, then it must be safe to continue doing so. 'We've always done it that way' becomes the unwritten law."

33. If Jerome Frank, Courts on Trial, Chapter XIX, "Precedents and Stability," pp271-273, eventually reaffirms stare decisis amidst searching criticism at least when it does indeed follow the letter of the law, he does prominently describe the force of habit, which is that much more ominus amidst slapdash unpublished opinions:

"Let me now, instead of justifying, let me try to explain the precedent system. First and foremost is habit. Every institution- a telephone company, an athletic club, a debating society- builds up habit patterns, precedents. It could not get along without them. Routines save time.

"In more general terms, some acceptance of precedent stems from inevitable inertia.In all aspects of life, individual or social, there is a resistance to change..."

"Especially are professional groups, of specialists addicted to set ways. Even the natural scientists, presumably inspired by the spirit of intellectual adventuring, are by no means free of stick-in-the-mudism, ... Out of such laziness comes what Holmes called 'One of the misfortunes of the law,' that 'ideas become encrusted in phrases and thereafter for a long time cease to provoke further analysis.'" (225 U.S. at 391)

34. Force of habit is a problem in many fields, of course, but it seems to ba a particular problem in the judiciary. Upon resigning as judge to assume the governorship, John Altgeld gave us some idea why:

"The question is frequently asked: 'Why does a man cease to grow after he goes on the bench?'

"As a rule, men elected to the bench have established a reputation of being men of strong character and growing intelligence, and if they had remained off the bench they would have continued developing. But as soon as a man is elected to the office of judge, all growth seems to cease; after years of experience on the bench, he has not grown but deteriorated.

"There are several reasons for this. In the first place, his active life ceases. He literally and figuratively ***sits down****. Growth, strength and greatness come from*

contest. The judge being relieved of contest, of life's fierce struggle, naturally becomes phlegmatic, and development is impossible. And then he ceases to create, to shape and to originate. It is his business to discover and apply what others have said.

"A large portion of his thought is taken up with the consideration of little things- drawing learned distinctions between tweedledee and tweedle-dum. The effect of this is belittling.

"Instead of the independence which comes from fighting life's battles, which develops greatness, the judge too often, unintentionally and unconsciously, becomes merely the expression of what is for the time the dominant influence of the land. This dominant influence is like the pressure of the atmosphere; it envelops him and is almost irresistable. It requires tremendous strength of character to rise above it and be guided solely by the pole-star of justice. Yet the judge who gives way to the pressure, and allows his high office to be used for purposes of oppression and of wrong, is a curse to his country." (original emphasis) John Altgeld, The Cost of Something for Nothing, "Do Judges Stagnate?," 1904, Chicago Historical Bookworks, Chicago, 1989

35. Coerced prayer in public schools was declared unconstitutional in Engel v. Vitale, 370 U.S. 421. "Prayer" continues unabated in the courts, however, no matter that coercion is "essential to the idea of a law," that otherwise it is "to nothing more than advice or recommendation," Federalist 15. Although Wendt finds such "prayer" offensive to his personal religious sentiments, from the standpoint of a presumed sender, his more immediate concern is the larger social effect between other senders and the receivers, an effect he sees all too clearly in "raw judicial power."

36. Rather few people feel confident of their ability to form a legal opinion. Of those who do know their way around a law library, rather few are willing to sail beyond the sight of land, so to speak, to risk respectability within the "legal community." It has its mystique, by which it enhances its power, Posner, The Problematics

of Moral and Legal Theory, pp187-191; its training is even "adversative," not unlike a military academy, p291, n117. The overall effect is not unlike Dorothy and her companions entering the hall of the Great Oz, completely tremulous before the booming voice and whooshing jets of flame. There the little dog Toto could go behind the curtain and expose the old faker from Kansas, but that is incomparably harder in the real world. For about the past quarter century this has been Wendt's view how the legal status quo is maintainted in this country, a notion reinforced by Boorstin, The Mysterious Science of the Law, just keep them befuddled enough to defuse any real challenge. Thus flourish the wellsprings of "raw judicial power." The use of the word "prayer" to denominate communication with civil authorities should have ended with this passage from Thomas Paine's Common Sense, Part III:

"Every quiet method for peace hath been ineffectual. Our prayers have been rejected with disdain; and have tended to convince us that nothing flatters vanity or confirms obstinacy in kings more than repeated petitioning- and nothing hath contributed more than that very measure to make the kings of Europe absolute. Witness Denmark and Sweden. Wherefore, since nothing but blows will do, for God's sake let us come to a final separation, and not leave the next generation to be cutting throats under the violated unmeaning names of parent and child."

DEBILITATIONS OF UNPUBLISHED DECISIONS

37. Unpublished opinions, the result of spiraling workloads, in turn the result of spiraling, mostly unconstitutional statutes, have recieved scholarly attention, mostly adverse. Martin, ibid, is a notable exception. The principal defense of them is the spiraling workload of the federal courts, Martin, 177-178, 181-183, 189. They are supposed to be confined, however, to cases that can be decided as a matter of settled law, not those making meaningful contribution to the body of precedents, 189. Certainly not to those presenting novel questions, as Wendt's federal cases have.

38. Most scholarly opinion, however, is sharply critical of unpublished opinions, the principal objection being slipshod, slapdash justice. Charles E. Carpenter, Jr, The No-Citation Rule for Unpublished Opinions: Do the Ends of Expediency for Overloaded Appellate Courts Justify the Means of Secrecy?, South Carolina Law Review, 50:234 (1998), seems to be a compendium, more or less, of recent scholarly opinion on unpublished opinions. Acknowledging the "volume crisis" in the first sentence, the first paragraph lists a dozen concerns raised by unpublished opinions and no-citation rules. Important as they all are, especially pertinent to this case are, *"...(2) judicial precedent as a foundation of the common law, (3) quality of analysis in deciding cases, (and) (9) the right to petition the judicial branch for redress of grievances..."* N35 quotes a dissent to Wilson v. Layne, 141 F.3d 111, 124n6, in pertinent and revealing part, *"... However, it is well known that judges may put considerably less effort into opinions they do not intend to publish. Because these opinions will not be binding precedent in any court, a judge may be less careful about his legal analysis, especially when dealing with a novel question of law...."* A novel question of law? In an unpublished opinion? Carpenter's ideal solution would be adequate judicial resources, but would compromise to allow citation of unpublished opinions as persuasive but not binding authority. (He quotes the Eighth Circuit rule as an example, the same rule, however, since declared unconstitutional, Anastasoff v. United States, 223 F.3d 898 (8th Cir., 2000) He says in conclusion, *"Lawyers... do not want to travel on a voyage over the deep like ancient fisherman who may die an unknown death or return with a catch of good fortune, never knowing why, and only able to curse or give thankful praise to the all powerful but unrevealing gods."* Neither does non-lawyer Wendt. Ironic for purposes of this case is Carpenter's discussion, 254-256, "Lack of Trust and Faith in the Judiciary," in that the trial court order of September 19, 2000, p4, in Wendt v. Slater cites Valley Forge Christian College v. Americans United, 454 U.S. 464, 474-475,

beginning with a discussion of the need to maintain confidence in the courts.

39. Attached as Appendix "A" is a two page article, "Justice in the Dark," Forbes, October 28, 2000, p72, which is well summarized in the pull quote, *"When judges issue an unpublished opinion, they are free to ignore the law and indulge their whims instead."* This article dwells considerably more on the larger public impacts of unpublished opinions than do the scholarly articles, and is hardly so deferential to judges. In Wendt's experience, the courts blithely ignore written law, and the hapless unfavored litigant is little more than Scheherezade desperately importuning the sultan for another day's reprieve. He finds himself recalling that Vince Lombardi told the champion Green Bay Packers that they had to practice just as hard as ever, that they just could not throw their shirts on the field and expect to win ball games. What Wendt has gotten from the vaunted federal courts in all three cases so far could just as easily come from ward heelers fluent in legalese.

40. This case and Wendt's previous federal cases presented novel legal questions that were not even mentioned in the unpublished orders, in a compound violation of due process. Defenders and critics alike of unpublished opinions consider them appropriate only in "routine" cases settled by existing precedent.As quoted above, however, the dissent to Wilson v. Layne, 141 F.3d 111, 124n6, mentions unpublished opinions given with less care even in cases with novel questions. 6 CJS 143-147 define "arbitrarily" and "arbitrary" in several different ways, but all applicable to the unpublished rulings in all of Wendt's cases, in that proper consideration was not given Wendt's positions, constitutional and statutory. It is the very essence of due process, of course, to prevent arbitrary action. In any other profession this would be malpractice, even legal malpractice. If legal malpractice is hard to define, still

"On the other hand, clearly within the definition of legal malpractice is the negligent rendition of legal services. The courts agree that 'legal malpractice'

encompasses liability for negligence. The wrong is sometimes alternatively stated in terms of an implied contract to to exercise ordinary skill and knowledge, and corresponds to the standard of care used to evaluate competence. Thus, the attorney's liability is comparable to that of other professionals." Mallen and Levit, Legal Malpractice, Second Edition, p3 (The proper scienter, however, would be that of U.S. v. Ramsey, 785 F.2d 184, 188-191, the "ostrich instruction" case.)

INFRINGEMENT OF WENDT'S RIGHTS

41. The right to sue is the right to protect all other rights:

"... The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship..." Chambers v. Baltimore & Ohio, 207 U.S. 142, 148 (1907)

42. Wendt's rights of access to the courts has been and probably will continue to be infringed by judicial caseloads swollen by litigation under unconstitutional laws. If he cannot attack them directly, at least his case ought to be given priority over them.

Wherefore William F. Wendt, Jr., Plaintiff-Appellant, pro se, moves that priority be given this case over those brought under overly Hamiltonian, unconstitutional laws.

William F. Wendt, Jr.
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(Excerpts of the appendix)
Brigid McMenamin, "Justice in the Dark,"
Forbes, Oct. 30, 2000, p72

Last year federal appeals judges disposed of 79% of the 26,819 cases they decided by issuing so-called unpublished decisions, up from 37% in 1977. Over 7% of

the unpublished decisions consisted of a single word. Whether curt or long-winded, an unpublished decision isn't precedent. That means the judges can be sloppy. They are not accountable for illogic or inconsistency in the rulings.

The shortcut system began in the late 1960s when judges were struggling to deal with an avalanche of social justice as well as a parade of *pro se* litigants from the jailhouse. But does this justify lazy law? "[Unpublished decisions] are not prepared with the same kind of exactness," admits Procter R. Hug Jr., chief judge of the 9th Circuit on the West Coast, though he contends that they are still sound.

Judges insist that they issue unpublished decisions only in simple, non-controversial cases, where the answer is clear-cut. The statistics say otherwise. Appeals courts issue unpublished decisions in 24% of the cases where various judges disagree so much that one writes a dissenting opinion, and in 37% of the cases where they're reversing the trial court.

When judges issue an unpublished decision, they are free to ignore the law and indulge their whims instead.

There are better ways to deal with backlogs. Congress might appropriate the money to pay for more judges. Or perhaps shrink the overpowering role of federal law in our lives.

(cover page omitted; parties as on 64a)

IN THE 7th CIRCUIT COURT OF APPEALS

No. 03-1403

WILLIAM F. WENDT, Jr.,	)	
Plaintiff-Appellant, Pro Se	)	No. 02C7779
v.	)	Judge
WILLIAM REHNQUIST, FRANK)		KOCORAS
EASTERBROOK, WAYNE	)	Magistrate
ANDERSEN, SAMUEL BROOKS,	)	Judge
et. al., Defendants-Appellees	)	SCHENKIER

MOTION FOR NORMAL ACCESS TO THE COURT

William F. Wendt, Jr., Plaintiff-Appellant, pro se, moves for an order of this Court enforcing his normal access to the Court, specifically, allowing his entry to the federal courthouse at 219 S. Dearborn without presenting a photo ID in turn requiring a Social Security number. In support he offers as follows:

1. At 10 AM, February 19, 2003, Wendt sought to enter the federal courthouse at 219 S. Dearborn. A deputy marshal on the near side of the metal detectors stated that photo ID was necessary to enter the building. Wendt showed him an Illinois voter's card, a birth certificate card, and a library card, but the deputy marshal only said to come back with a photo ID. After Wendt asked, the deputy marshal also said the procedure had only started that day, that it was by presidential order, and that he could not express an opinion on its legality. He asked what Wendt wanted to do in the building. Wendt said he wished to observe a court proceeding. The deputy marshal said Wendt could not enter the building for that purpose and that the discussion was over. Whereupon Wendt left the scene.

2. Photo ID such as driver's licences and state ID cards are not available without giving Social Security numbers.

3. Two South African blacks on the David Susskind show in 1975 or so, as Wendt vividly recalls, said that at age fifteen or sixteen they had to get a book at a government office, that they had to get it signed by both employers every time they changed jobs, and that all the

information was duplicated in a computer in the capital. Put in a guy's number and his life history spits out. These were the infamous passbooks which they had to produce on demand to see if they were violating "influx control" measures.

4. Such a record of employment and other life history sounds a lot like Social Security to Wendt.

5. Wendt was fired from a job in 1986 for not showing a Social Security card, in a small factory that had been raided shortly before for illegal immigrants.

6. Wendt was refused entry to the 10th floor of the State of Illinois building, 100 W. Randolph, Chicago, on December 10, 2001, when he wished to attend the RTA budget hearing. This is a bit ridiculous as a security measure, since he was well into the building and was carrying, unchallenged, a satchel which could have contained ten pounds of explosives or anthrax, for all any state employee knew.

7. Wendt recalls that Social Security cards were once labeled, "not for purposes of identification." or something similar. He also recalls hearing of concern at the institution of Social Security, if he has yet to research it thoroughly, that giving everyone a number could lead to substantial abuses. That lead to measures protecting confidentiality of Social Security records and preventing its use for identification.

8. Wendt also recalls that Social Security accounts could be opened without any supporting documentation. In recent decades, however, if he understands correctly, a birth certificate or similar documentation has been required.

9. More recently, however, "identity theft" has become a household phrase, the problem often involving the extensive use and abuse of Social Security numbers.

10. In his MOTION FOR PRIORITY OVER CASES ENFORCING UNCONSTITUTIONAL, OVERLY HAMILTONIAN LAWS, ¶¶11, 16, Wendt raises a question that the constitutionality of Social Security was never properly established.

11. There is still no legal requirement in this country that anyone carry identification. There is, however, a substantial danger of a national ID card, which not that far from photo ID conditional upon Social Security numbers. See Timothy Lynch, "National ID Cards and Military Tribunals," Cato Handbook for Congress: Policy Recommendations for the 108th Congress.

12. Wendt has a right to sue, 42 USC 1981, which is greatly infringed without access to the court building for filing of papers and other court business.

13. If not a prisoner, Wendt nevertheless has a fundamental right of access to the Court. Marbury v. Madison, 5 U.S. 137, 161; Bounds v. Smith, 430 U.S. 817, 822, 828; Jones v. Clinton, 72 F.3d 1354, 1360, 1365.

14. Wendt has First Amendment and common law rights to inspect records and observe proceedings, which, who knows, might at some time be germane to his preparations in this case. These rights exist not only for personal purposes, but for public purposes such as maintaining the integrity and accountability of the courts. If not absolute, they can be limited only for compelling interests. Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3rd Circuit), 1066-1071; Wilson v. American Motors Corp., 759 F.2d 1568 (1th Cir. 1985), 1570-157; Newman v. Graddick, 696 F.2d 796 (11th Cir 1983), 799-801: Matter of Continental Illinois Securities Liigation, 732 F.2d 1302 (7th Cir 1984), 1308-1313.

15. Courts have inherent powers and duties to protect their integrity and the administration of justice. 21 C.J.S. 21, Courts §14; 20 AmJur 2d 347, 363, Courts §18, 43.

16. For some fifteen years now members of the public have been required to go through metal detectors and their parcels through an X-ray machine. This should be sufficient to stop anyone from bringing dangerous paraphernalia into the building.

17. Photo ID might have a valid security purpose where recourse is needed and possible against a specific individual, such as cashing a check or securing return of court files. Its requirement has no valid security

function where the names of individuals admitted are not taken and are admitted in such numbers that specific recourse would be exceedingly difficult.

18. Certainly as long as the courts adhere to purportedly if excessively Hamiltonian notions of government power, or longer, they should be mindful of a Hamiltonian notion of danger in Federalist No. 8, which applies to any excessive security measure:

"... The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated over the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors but as their superiors. The transition from this disposition to that of considering them masters is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions to make a bold or effectual resistance to usurpations supported by the military power."

19. In the event the photo ID requirement ceases before a ruling is issued, Wendt still seeks a ruling under the "capable of repetition, yet evading review" doctrine. Publicker at 1065; Southern Pacific Terminal Co. v. ICC, 219 U.S. 279, 283

Wherefore William F. Wendt, Jr., Plaintiff-Appellant, pro se, moves for an order of this Court enforcing his normal access to the Court, specifically, allowing his entry to the federal courthouse at 219 S. Dearborn without presenting a photo ID in turn requiring a Social Security number..

William F. Wendt, Jr.
1651 Hubbard
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(312) 421-4862 (landlord)

(cover page omitted; parties as on 64a)
IN THE 7th CIRCUIT COURT OF APPEALS
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WILLIAM F. WENDT, Jr.,	)	
Plaintiff-Appellant, Pro Se	)	No. 02C7779
v.	)	Judge
WILLIAM REHNQUIST, FRANK	)	KOCORAS
EASTERBROOK, WAYNE	)	Magistrate
ANDERSEN, SAMUEL BROOKS,	)	Judge
et. al., Defendants-Appellees	)	SCHENKIER

PETITION FOR REHEARING EN BANC

William F. Wendt, Jr., Plaintiff-Appellant, pro se. petitions for rehearing en banc under FRAP 35 on grounds of extraordinary importance. In support he offers:

* * * * *

Reject Slip Redux

* * * * *

Unmentionables, 7th Circuit Style

* * * * *

Judges' Own Case Insubstantial?

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Federal Violations From The Bench

* * * * *

What Finality In Wendt's Litigation?

* * * * *

(important excerpt not duplicated elsewhere)

Philosophical Philandering

29. When going around and around with the sophisticates of the legal system, Wendt often identifies with the "Zero" character in the Beetle Bailey comic strip, whose long-running gag is taking idiomatic expressions literally. Poor, ignorant, naive, unschooled, out of the loop Wendt, that he should remind both this Court (as previously the trial court) of the bicentennial of Marbury v. Madison, 1 Cranch. 137, Brief, ¶24, and wonder if it is still the emphatic duty of the courts to say what the law is, if the essence of civil liberty is still the

ability to claim protection of the law whenever one suffers an injury, or if there is a constitution if the courts do not rule on it!

30. In his MOTION FOR ADJUDICATION IN SPIRIT OF PATRIOTIC SELF-SACRIFICE, ¶10, Wendt professed not to know all the "inside baseball" behind the Supreme Court decision subjecting federal judges to the income tax. Nor does he consider the coercion of judges or financial conflicts of interest set forth there a complete explanation for the abandonment of judicial function set forth in his MOTION FOR PRIORITY OVER CASES ENFORCING UNCONSTITUTIONAL, OVERLY HAMILTONIAN LAWS. Some sort of larger philosophy is necessary to put a gloss on all this, to confer some sort of pseudo-respectability, to pull it all together. "Inside baseball," however, is where one finds it, and not always in the deepest, darkest, most obscure and conspiratorial corners. Wendt's education has continued apace since then, and not just finding out that there is no planned observance of Marbury's bicentennial, at least at the local law school named for its author.

31. There are, in any event, in prevailing legal contemplation, such as it is, higher realities to be discerned. If explaining what has gone wrong with the federal judiciary is beyond a brief essay, still Robert Kenneth Faulkner, The Jurisprudence of John Marshall, Appendix I, "Justice Holmes and Chief Justice Marshall," Princeton University Press, 1968, comes surprisingly close, and appropriately for this matter. Indeed, it ties the two previous motions together, in particular the Holmesian deference to power. Resisting the temptation to quote considerably more, even the whole essay, Wendt finds Faulkner's criticisms of Holmes closely reflect Wendt's impressions of overly familiar judicial practice, deference to the powerful especially:

"....It was Holmes who chiefly began in this country the jurisprudential revolt from natural rights, the assertion of social expediency as the standard of judicial decision, the doctrine of judicial deference, the change from the primacy of property rights to that of free

speech, the rise of moral skepticism, legal realism, and many other things now widely taken for granted..." pp227-228

"An investigation, then, of Holmes' critique of Marshall illuminates the basic principles of American law, both in their original form and as stamped by Holmes. Such a study may also have for the reader the practical effect it had on me: a gradual yet compelling realization that what seemed to be a great step forward in the name of social advantage is not so obviously superior, that we have been misled about the quality and character of the country's original jurisprudence, and, generally, that the struggle between what Holmes urged and what Marshall stood for needs to be reconsidered without prejudice." p228

"... There is absent from Holmes' thought Marshall's clear deduction of Lockean government and society from Lockean man's needs. Holmes, having supposed on liberal grounds the necessity of law, is disposed then to lend legitimacy generally to any society and to any law...." (!!!!!!!!!!) p247

"... First, however, it is necessary to treat the best-known ingredient of his more practical views, the doctrine of judicial deference...

"The doctrine was essentially this: defer to the dominant force that arises from society's struggle for existence.... If the judge was to defer to the stronger this standard was itself a transformation of the American judicial role...." (!!!!!!!!) p249

"This law of social struggle involved a paradox which is evident throughout Holmes' interpretation of the Constitution. There are no fundamental constitutional principles, but the principle that wins in the market is to be regarded as fundamental. The deference implicit in the principle, no absolutes, is contradicted by that absolute and its supporting absolutes..." p251

"... When Holmes did protect private liberties, including property and the management of business, his doctrines tended to be less restrained, more in tune with a no-holds-barred struggle, than Marshall's. On the oth-

er hand, Holmes was much more inclined to respect legislative acts which impinged on private rights, especially that to acquire property. At times, it must be said, Holmes' insistence on the right of the stronger to act through its legislative will seemed to display a certain disdain toward minorities and the weak generally. 'The legislature,' he was willing to affirm openly, 'has a general power to make a part of the community uncomfortable by its action.' (Tyson Bros. v. Banton, 273 U.S. 446)) It is hard to believe that Marshall would have ranked among constitutional authorities such a power, however he might have recognized the incidental effects of government action. Professor Rogat has called 'harsh' and even 'callous' Holmes' judicial opinions treating such vulnerable classes as aliens and Southern Negroes. These might profitably be compared with the Marshallian equivalent..... the Chief Justice's views on slavery as well as judicious treatment of the Cherokee Indians." pp253-254

"... It is not strange that, in many remarks on eugenics, and in some judicial decisions, Holmes was willing, with an absence of moral feeling and of politic caution, to justify a scientific or pseudo-scientific manipulation of humans... (n63- The classic example is Buck v. Bell, 274 U.S. 200 (1927))" p260

"... The attempt must be made to restore that peculiar soundness for which American institutions were designed. Well interpreted and wisely qualified in accord with our experience, it is probably the best standard of which the country is capable. Without that original view all standards seem lost and a peculiar kind of aimlessness and degradation results. It is as part of such a restoration that my study of Marshall is intended." p268

32. Holmesian deference to the stronger, more dominant factions was well rebutted in advance. It is definitely not the original intent of the framers. There was this quaint, now largely ignored fellow by the name of Madison who made this now astoundingly timely comment on a proper deference to the weak in Federalist 51.

Indeed, protection of the weak is why the powerful find it necessary to establish legal institutions in the first place:

"...Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their situation, to submit to a government which may protect the weak as well as themselves, so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful...."

33. Fortunately Holmes' relativism was likewise well rebutted in advance, and as an antidote to public corruption:

"Counsel claim that the conditions of modern life are widely different from those of the times immediately preceding us, and that, in view of the revolutions in business methods which have taken place in modern times, what was decided to be against public policy in the past generations may be a common and ordinary method of doing business to-day, which is approved by the common sense of men. That which is against public morals and public decency should be subject to the condemnation of the courts in all generations. Righteousness is the same to-day as it was yesterday. The refinements of modern civilization may have increased the forms of bribery and corruption and made them more dangerous and insinuating, but they none the less merit the reprobation of honest men." Crichfield v. Bermudez Paving Co., 174 Ill. 466, 482, 51 N.E. 552 (1898).

34. "Three generations of imbeciles are enough," intoned Holmes in Buck v. Bell, 274 U.S. 200, 208, approving the sterilization of mental defectives and part of an American eugenics movement that inspired Hitler

(Peter Quinn, "Race Cleansing in America," American Heritage, March 2003, pp34, 36). Speaking of imbecility and related topics, Joseph Story, Marshall's associate and profound admirer, also rebutted Holmes in advance. From his Commentaries on the Constitution of the United States, Chapter XXXVIII, §818, as often quoted in Wendt's ignored objections to "selective binding authority," most recently in the PETITION FOR EN BANC CONSIDERATION WITH DISCLOSURE OF JUDGES' ETHICS STATEMENTS, ¶25:

"... Where there is no judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty. The will of those, who govern, will, under such circumstances, become absolute and despotic; and it is wholly immaterial, whether power is vested in a single tyrant, or in an assembly of tyrants... And it is no less true, that personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice. If that government can be truly said to be despotic and intolerable, in which the law is vague and uncertain, it cannot but be rendered still oppressive and more mischievous, when the actual administration of justice is dependent upon caprice, or favour, upon the will of rulers, or the influence of popularity. When power becomes right, it is of little consequence, whether decisions rest upon corruption, or weakness, upon the accidents of chance, or upon deliberate wrong. In every well organized government, therefore, with reference to the security of both public rights and private rights, it is indispensable, that there should be a judicial department to ascertain, and decide rights, to punish crimes, to administer justice, and to protect the innocent from injury and usurpation."

35. Wendt spoke about this litigation at Chicago's notorious College of Complexes and was told by that usually feisty bunch to go to law school and "join the club."

Wendt objected to having to join any "club" and concluded with the following quote. Edmund Burke is widely quoted as saying that all evil needs to survive is that good men do nothing, even if that is not exactly what he said. He did say, however,

"...another circumstance in our colonies, which contributes no mean part towards the growth and effect of this intractable spirit. I mean their education. In no country perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in some provinces takes the lead. The greatest number of the deputies sent to congress were lawyers. But all who read, and most do read, endeavor to obtain some smattering of that science... This study renders men acute, inquisitive, dextrous, prompt in attack, ready in defense, full of resources. In other countries, the people, more simple, and of a less mercurial cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the presure of the grievance by the badness of the principle. They augur misgovernment at a distance; and snuff the approach of tyranny in every tainted breeze."

36. Was it we, the club, who ordained and established this Constitution of the United States? Or, rather, We the People? Law is too important to leave to lawyers. It will be left to them, however, until the people get back in the act, until the revolution described by Thomas Paine in his Dissertation on the First Principles in Government:

"While men could be persuaded that they had no rights, or that rights appertained only to a certain class of men, or that government was a thing existing in right of itself, it was not difficult to govern them authoritatively. The ignorance in which they were held, and the superstition in which they were instructed, furnished the means of doing it.

"But when the ignorance is gone, and the superstition with it; when they perceive the imposition that has been acted upon them; when they reflect that the cultivator and the manufacturer are the primary means

of all the wealth in the world, beyond what nature spontaneously produces; when they begin to feel their consequences by their usefulness, and their right as members of society, it is then no longer possible to govern them as before. The fraud once detected cannot be re-acted. To attempt it is to provoke derision, or to invite destruction."

Corking the Conclusion

* * * * *

WHEREFORE, William F. Wendt, Jr., Plaintiff-Appellant, pro se, petitions for rehearing en banc under FRAP 35 on grounds of extraordinary importance.

William F. Wendt, Jr.
1651 Hubbard
Chicago, Illinois 60622
(312) 421-4862 (landlord)

IN THE UNDITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM F. WENDT, Jr.,

v.

Justices of the Supreme Court of the United States WILLIAM REHNQUIST, JOHN PAUL STEVENS, SANDRA O'CONNOR, ANTHONY KENNEDY, ANTONIN SCALIA, CLARENCE THOMAS, DAVID SOUTER, RUTH BADER GINSBURG, and STEPHEN BREYER
United States Court of Appeals Judges for the Seventh Circuit RICHARD POSNER, ILANA DIAMOND ROVNER, ANN CLAIRE WILLIAMS, FRANK EASTERBROOK, WILLIAM BAUER, KENNETH RIPPLE, JOHN COFFEY, MICHAEL KANNE, DIANE WOOD, TERENCE EVANS, DANIEL MANION, and JOEL FLAUM
Federal District Court Judges for the Northern District of Illinois, Eastern Division, JAMES HOLDERMAN and WAYNE ANDERSEN
Federal prosecutors SAMUEL BROOKS, PATRICK FITZGERALD, and THEODORE OLSON

JURY DEMANDED

COMPLAINT FOR DAMAGES AND OTHER RELIEF

William F. Wendt, Jr., plaintiff, pro se, complains of the defendants:

Count I

1. This action arises under the Constitution of the United States, Article III, §§1, 2, the Due Process clause of the Fifth Amendment, the Thirteenth Amendment as enforced by the Civil Rights Acts of 1866 and 1870, and the fundamental constitutional right of access to the courts (Marbury v. Madison, 5 U.S. 137, 161; Bounds v. Smith, 430 U.S. 817, 822, 828; Jones v. Clinton, 72 F.3d 1354, 1360, 1365), being more than simply presenting a paper subject to dismissal for convenience of court and litigants (Bonner v. City of Pritchard, Ala., 661 F.2d 1206, 1211).

2. This Court has jurisdiction under 28 United States Code 1331.

3. The plaintiff is a natural born American citizen, a registered voter, and a long-time resident of the City of Chicago. As elaborated below, he litigated two ca-ses in the Federal District Court for the Northern District of Illinois, Eastern Division, the 7th Circuit Court of Appeals, and the Supreme Court of the United States that were both dismissed on hypothetical jurisdictional bars. He has constitutional and statutory rights to invoke the judicial power of the United States, to have his day in court and be heard, to sue, be a party, and enjoy the benefits of laws and proceedings for the protection of property, and to meaningful access to courts beyond simply presenting a paper subject to dismissal for convenience of court and litigants.

4. Defendants William Rehnquist, John Paul Stevens, Sandra O'Connor, Anthony Kennedy, Antonin Scalia, Clarence Thomas, Richard Souter, Ruth Bader Ginsburg, and Stephen Breyer are justices of the Supreme Court of the United States. Defendants Richard Posner, Ilana Diamond Rovner, Ann Claire Williams, Frank Easterbrook, William Bauer, Kenneth Ripple, John Coffey, Michael Kanne, Diane Wood, Terence Evans, Daniel Manion, and Joel Flaum are judges of the 7th Circuit United States Court of Appeals. Defendants James Holderman and Wayne Andersen are judges of the Federal District Court for the Northern District of Illinois, Eastern Division. As such they have duties to exercise the judicial power and to decide cases arising under the Constitution and laws of the United States, a judicial function described as saying what the law is, as exercising judgment, not will, as applying law to fact, as weighing competing arguments in light of relevant facts and applicable law. and as dispensing equal justice under law, as opposed, say, to unequal favors under proclivities. They have judicial duties, likewise, not to usurp that power nor to exercise a legislative power, nor to deny the rights to sue, be a party, and enjoy the benefits of laws and proceedings for the protection of

property and thus inflict a badge and incident of slavery upon a litigant, nor to deny access to the court. They are required to exercise the jurisdiction that is given as well as to refrain from that which is not, and to determine jurisdiction before anything else, likewise, to maintain the appearance of justice. Sworn to uphold the Constitution, their most important duty is not to suspend it. They have no power to nullify the law, to throw a case by ignoring an unfavored party's best argument. They may not hold a matter nonjusticiable without first interpreting the text in question and determining whether and to what extent the issue is textually committed. Their discretion is limited by the ancient doctine of *stare decisis* or binding precedent, that being to limit arbitrary action, to base decisions on reason not fiat, to maintain stability and confidence in the law, and to protect the integrity of the court. They are granted lifetime tenure under Article III, §2 of the United States Constitution for the protection of their independent judicial function.

5. Defendants Samuel Brooks, Patrick Fitzgerald, and Theodore Olson are prosecutors in the United States Department of Justice. As such they have responsibilities to represent a client with not only a responsibility to govern but govern impartially, not merely to win cases but to see that justice is done. They are sworn to uphold the Constitution. They or their colleagues in the same department have the power to initiate civil and criminal prosecutions on behalf of the government, including prosecutions of judges (U.S. v. Isaacs, 493 F.2d 1124, 1140-1144, cert. den. Kerner v. U.S., 417 U.S. 976, reh. den. 418 U.S. 955), which can exert coercive power over them, constitutional life tenure or not, per Lord v. Kelley, 240 F. Supp, 167, 169, judges who offend the Internal Revenue Service can expect a close inspection of their tax returns, and State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988), almost 90 pages of court opinion, exhibits, and concurrence on the sandbagging by federal agents of former Federal District Judge Harry Claiborne, the first federal judge in recent years to be impeached.

6. The defendants all enjoy official immunity from lawsuits, to free them for the unflinching discharge of their duties, to exercise their authority freely, not timidly, and to free them from threats of harrassment and intimidation.

7. Plaintiff William F. Wendt, Jr. filed a state lawsuit in August 1995, objecting to a state legislative appropriation for the University of Illinois at Chicago to take over the historic Maxwell St. Market area. Wendt and other objectors had been promised a hearing in Chicago on the appropriation at a meeting of the House higher education committee, several times on the record. The hearing, at which the appropriation was passed, was held, however, in Springfield, with only the other side being notified and objectors not present. The lawsuit sought principally to have the appropriation declared unconstitutional as violating Art. 4, §7(a) of the Illinois constitution requiring reasonable notification of legis-lative hearings and Art. I, §5 protecting the right to peaceably assemble, petition for redress of grievances, and inform public officials. Defenses of sovereign immunity and the enrolled bill rule (Art. 4, §8(d) of the Illinois constitution of 1970, prohibiting lawsuits on legislative procedure) were offered and upheld by the trial court. There was no visible concern by court or counsel that sovereign immunity under Illinois law would put the matter in the Illinois Court of Claims, a legislative advisory body that cannot perform judicial review, as Wendt plainly contended. Never mind, either, taking Wendt's statement, "no allegations of wrongdoing," completely out of context, without asking him any specific question about it, or anything else, for that matter. Plus, it denied the motion to amend the complaint because it does not cure allegedly fatal but still unspecified defects. At another hearing the trial court blew off the motion for rehearing, as "nothing new" with another prepared statement, never mind that the motion presented an extensive discussion of substantive and procedural issues as related to the enrolled bill rule, again with

no one asking Wendt any specific question or making any rebuttal.

8. On appeal the other side's briefs ignored or ridiculed the constitutional purpose of the notification requirement, public participation in the legislative process. Wendt's reply brief accused opposing counsel of inviting the court to abandon the judicial function for that of sultans, potentates, commissars and gauleiters. The appellate court opinion did just that, without the requested oral argument, not ruling on any legal question, quoting "no allegations of wrongdoing" no less than four times, echoing the trial court on fatal but still unspecified factual defects and "nothing new," and even making the totally gratuitious, unfounded statement that Wendt was at the hearing. The petition for rehearing was denied without comment. The petition for leave to appeal in the Supreme Court of Illinois asked in so many words whether there is peaceful recourse in Illinois legislative and judicial processes. The motion for reconsideration in the supreme court cited the duty of courts to rule on constitutional questions and threatened a federal lawsuit if such a ruling was not forthcoming.

9. On November 12, 1998 Wendt filed a federal action in the Federal District Court for the Northern District of Illinois, No. 98 cv 7226, naming the original state defendants and all the judges and lawyers in the state case, seeking, in part, declaratory relief that the state court proceedings are null and void. The jurisdiction of the court was invoked under Art. IV, §4 of the United States Constitution, the 13th Amendment, the 14th Amendment, Title 28 U.S.C. §§1331 and 1343(3), 28 USC 2201, 2202, and Title 42 U.S.C. §§1981, 1983, 1985(2), 1985(3), 1986, 1988. In short, there was alleged a deprivation of the benefit of a proceeding (the legislative hearing) for the protection of property (Wendt's stake in State of Illinois funds), deprivation of the right to sue, and conspiracies to impair the course of justice. The other side filed motions to dismiss, by three separate counsel, citing res judicata, statute of limitations, *Rooker Feldman,* insufficient allegation of conspiracy, judicial, pro-

secutorial, legislative, and 11th Amendment immunities, and no allegation of racial discrimination under §1981.

10. An amended complaint was allowed in March 1999, which corrected an insufficient naming of state court counsel and added three counts. The respondents again moved to dismiss, appending, as before, the state court complaint, appellate court decision, and the preliminary opposition with the "no allegations of wrongdoing" statements. Wendt's objections were stricken over a disputed question of format by a substitute judge. Wendt filed his truncated objections, addressing the defenses offered, arguing a failure to rule on constitutional issues and tampering with the factual premises of the case. ¶¶18-24 argued the defendants misapplied *Rooker Feldman* doctrine, ignoring the repetition in Ritter v. Ross, 992 F.2d 750, 752, (7th Cir 1993), which noted the characteristics of a valid state court decision, beyond challenge in a federal trial court:

"In declaring the district court to be without jurisdiction, the Supreme Court noted the validity of the state court decisions. The state court had jurisdiction of the subject matter and the parties, it conducted a full hearing, and the judgment was responsive to the issues. Id. (Rooker) at 415, 44 S.Ct. at 150."

11. After the respondents replied, defendant Holderman dismissed the amended complaint on July 2, 1999, without oral argument, citing *"Rooker Feldman* doctrine." There was no mention of the requirements of validity for a state court judgment. Significant portions were quoted in the appellate brief, below, ¶17.

12. Wendt moved to alter or amend the judgment, largely on previously cited but ignored grounds, but also asserting authority under Reconstruction statutes to deal with closed courts. Relating to the authority of the court and the judicial function, state and federal, the motion argued in pertinent part, also repeating ignored arguments regarding *Rooker-Feldman* :

"1. The order of July 2, 1999 applies *Rooker-Feldman* as a sweeping generality. On its face one

would have no idea whatsoever the doctrine itself has any exception and likewise no idea that the plaintiff had offered his side of it at some length... And on that the plaintiff is admonished to 'accept defeat.'"

"16. If there is not yet such a doctrine as Null Adjudicata, a fancy way perhaps of saying 'null and void,' it is time to coin one for situations such as this. Courts have solemn duties *'to say what the law is'* and to give effect to the constitution when necessary, or else we simply do not have a constitution. Marbury v. Madison, 1 Cranch. 137, 177, 178-179. The amended complaint, ¶77, alleges there was nothing meaningful said about the constitutional provisions, but that is now proven. The rulings are null and void in that the court has no power to avoid a constitutional ruling when necessary to settle a case. A prerequisite to jurisdiction is a ruling within the power of the court. Cooper v. Reynolds, 10 Wall. 308, 316, 77 U.S. 308, 19 L.Ed. 931, National Malleable v. Goodlet, 105 F.2d 8, 15, Briley v. State of Cal., 564 F.2d 849, 857. 'Constitution be damned' is the attitude of the Illinois judiciary as well as the legislature (amended complaint, ¶¶95, 100). The rulings are merely exercises in what Ambrose Bierce defined as prejudice: *'A vagrant opinion without visible means of support.'*

"17. ... If there is no legislative authority for appeal of valid state court judgments except to the Supreme Court of the United States, there is plenty for dealing with invalid judgments under the Civil Rights Acts of 1866, 1870, 1871 and 1875. (§§1981, 1983, 1985, 1986). The very language of the statutes refers to court proceedings. There is plenty legislative intent that the Reconstruction Statutes were designed to deal with closed courts. See, for starters, Alfred Avins, The Equal 'Protection' of the Laws: The Original Understanding, 12 New York Law Forum 385, 393 (re Civil Rights Act of 1866), 408 (re 14th Amendment).

"18. ¶35 of the truncated opposition, June 3, 1999 set forth the importance of invalidating such sub-Rooker judgments as is the case here:

'35. What is there anything in any of the state court rulings that might be considered protection of the public? If the Illinois courts were not as explicit as Dred Scott v. Sandford, *60 U.S. (19 How.) 393, the inexorable implication of such a dismissal, in failing to rule on constitutional issues and in tampering with the factual premises of the case, if upheld, is that the plantiff has no right to sue, in turn no right the defendants, or anyone else, for that matter, are bound to respect, what the infamous and much repudiated* Dred Scott *case held. If so, the right to sue means no more than a right to howl at the moon. Lest immunity be allowed to protect a gross counterfeit of judicial independence, let's look at the flip side. Concluding a moving tribute to judicial independence, John Marshall said,*

'... I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary.' Evans v. Gore, 253 U.S. 245, 250-251

"29. If opposing counsel has knocked down a straw man, that is nevertheless more consideration to the plaintiff's side of the case than shown by this Court, which so far is nothing. The kindest explanation for such an omission is carelesness. Such carelessness in any other profession would likely be actionable malpractice. In the professions dealing with the self-executing laws of nature it could easily be disastrous. A surgeon that careless could easily kill his patient. A pilot or an engineer could likewise cause a crash or collapse with hundreds of fatalities. If judges have to be protected by immunity even when they do their jobs poorly, at least let this underscore the importance of liability when they do not do their jobs at all."

"31. That admonishment, too, quite without reference to another issue in this matter, the badges and incidents of slavery. That is the sort of advice offered to a slave. If the shoe fits, wear it. To 'accept defeat' under such circumstances would indeed be an acceptance of slavery. It would be acceptance that the plaintiff has pro-

tection of law only when the system feels like it, no more, at least, than what a farmer offers his livestock. It would be accepting the legislative and judicial processes as the private property of the defendants, for all practical purposes, just in case Court and counsel have not read the closing paragraph of the plaintiff's oppositions. Legal protection, however, is something more than a bleeding heart indulgence for pro se litigants. It is what holds civil society together. There is an elegant paragraph in Federalist 51 on what happens when legal protection fails. See Avins, op. cit, 394-395, Congressional Globe, 39th Cong., 1st Sess. 1255, 1263, on Sen. Wilson's and Rep. Broomall's connection between protection and allegiance, also see U.S. v. Cruikshank, 92 U.S. 542, 551 on the same point."

13. In their answer the respondents represented by the (Illinois) Attorney General's office, seconded by the university respondents, cited requirements for a motion to alter or amend as if Wendt's motion did not raise a question of law. Madigan's answer was only generalities.

14. Wendt's reply quoted the ignored passages of Rooker and Feldman directly and objected to the respondents' special pleading as impugning the integrity of the court. Excerpts going to the authority of the court include:

"1. *Rooker-Feldman! Rooker-Feldman! Rooker-Feldman!* Everybody hollers *'Rooker-Feldman,'* but who has acutally read Rooker? In pertinent part, Rooker v. Fidelity Trust Co., 263 U.S. 413, 415, 416 held:

"It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject matter and the parties; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs, 191 Ind. 141. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an

exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication..."

"Some parts of the bill speak of the judgment as given without jurisdiction and absolutely void; but this is merely mistaken characterization. A reading of the entire bill shows indubitably that there was full jurisdiction in the state courts and that the bill at best is merely an attempt to get rid of the judgment for alleged errors of law committed in the exercise of that jurisdiction."

"6. Whichever decision the defendants consider as controlling, they have yet to defend either in terms of Rooker, the plaintiff's repeated challenges notwithstanding. How then can this Court mount a more vigorous defense of it than they? Or uphold the dismissal without finding that whichever decision is controlling complies with Rooker?

"7. Is a selective *Rooker-Feldman* any *Rooker-Feldman?* By the same token, who has actually read Feldman, the oft-cited footnote here restated in more general terms by Justice Marshall, concurring in Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 25:

"'As we have said, '[i]f the constitutional claims presented to a United States district court are inextricably intertwined' with the merits of a judgment rendered in state court, 'then the district court is in essence being called upon to review the state-court decision. This the district court may not do.' District of Columbia Court of Appeals v. Feldman, (460 U.S. 462) 483-484, n.16..."

"9. *Rooker-Feldman?* How about *Prentis-Rooker-Feldman? Prentis,* as in Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, Feldman, 460 U.S. at 477:

"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist..."

"10. Where, pray tell, does either state court decision apply law to the facts? This is the sum and substance

of the judicial process, but even defendants have not had the gall to say that either decision applies law to the facts. Again, the defendants themselves admit to not ruling on the constitutional questions, nor do they dispute even at this late date the factual tampering, etc. *'We went on to suggest that the nature of a proceeding 'depends not upon the character of the body but upon the character of the proceedings. (citations)'* Feldman, 460 U.S. at 477. Not applying law to the facts, the decisions are nonjudicial, and thus not reserved as judicial for review by the Supreme Court of the United States, Feldman, 460 U.S. at 482-483, 486; Ritter v. Ross, 992 F.2d 750, 753.

"11. Likewise ignored is the plaintiff's repeated attack on *sub-Rooker* judgments as exceedingly dangerous to the rule of law. The right to sue is meaningless if complaints can be dismissed on the basis of political smear or personal attack or statements taken out of context or on the basis of a paragraph or two deemed insufficient to sustain the whole complaint, ignoring everything else. Let's put it this way. As this is written there is an ongoing controvesy over a certain 'Pontifex Maximus' being denied an Illinois law license because of his widely advertised views that would deny a substantial portion of the population any protection of law. At least ol' Pontifex is direct and explicit about it. He does not leave it to indirection and implication that anyone might be denied any protection of law, via *sub-Rooker* judgments whose 'merits' are nothing but political smear and personal attack. Ditto for the order of July 2, 1999, if it is allowed to stand."

"13. Is Illinois ready for Reconstruction? Judging by the defendants' pleadings, no. They are no more willing to admit the plaintiff's right to sue in federal court than in state court. Not having a compliant substitute judge, with a reputation for favoritism and making up his mind too soon, to entertain a motion to strike on a completely specious matter of format, what do the Atty. Gen./U of I defendants do? They cite a case on the requirements for a Rule 59(e) motion, as if the motion to al-

ter or amend does not point out an error in law or manifest injustice. A controversy whether a decision applies law to facts is not, in their estimation, a matter of law, just, again, twice (pp4-5), the plaintiff's unhappiness. The state trial court ruled and the federal trial court ruled, and the plaintiff is just supposed to accept defeat whether his side of the case is reflected or not in any court decision, state or federal, after four years of litigation. *Roma locuta, causa finita....* Law is indeed too important to be left to lawyers, lest they undermine the whole thing. Are the defendants ready for Reconstruction? How about the Revolution, as that was described in Chisholm v. Georgia, 2 U.S. (Dall.) 419, 471, 1 LEd 440, 462-463?"

"18. For all the gall they can muster, the defendants still have not disputed that this Court has plenty legislative authority to deal with closed courts, motion to alter or amend, ¶17, nor that a trial court can declare a decision null and void, ¶20, nor that even res adjudicata is no bar to relitigation if there has been no full and fair opportunity to be heard, ¶21. Furthermore, *'... if it were possible in practice to confine such complaints to the guilty (public officials), it would be monstrous to deny recovery...'* Gregoire v. Biddle, 177 F.2d 479, 481. There is no need here, however, to protect the judicial defendants *'in the unflinching discharge of their duties'* nor even to protect them from *'the burden of a trial'* and *'the inevitable danger of its outcome,'* id., as there is plenty before this Court already to support a summary judgment that they have flinched...

"19. A court having jurisdiction generally has a duty to exercise it. 36 CJS 48, Federal Courts §10(1); 32A Am Jur 2d 352, Federal Courts §1041; 21 CJS 85, Courts §68; 20 Am Jur 377-378, Courts §61."

15. Defendant Holderman's order of August 19, 1999 denied the motion to alter or amend the judgment without addressing Wendt's objections. Significant portions were quoted in the appellate brief, below, ¶17.

16. Wendt timely filed a notice of appeal on September 16, 1999 in the 7th Circuit Court of Appeals, No.

99-3409. On October 27, 1999 he moved for judges from outside the 7th Circuit (appending an August 1999 Chicago magazine article on the Chicago elite's great favor trading economy) and a remand to the trial court, also making plain that *Rooker Feldman* was an issue. It was denied.

17. Wendt filed his brief on November 30, 1999, arguing requirements for state court proceedings from the actual language of Rooker and Feldman, as in trial court asking if anyone had read these decisions, also citing six statements of Congressional intent that the Civil Rights Acts of 1866 and 1871 confered jurisdiction on lower federal courts over closed state courts. The argument began with criticism of the trial court orders as an abandonment of judicial function:

"22. On their face the orders are grossly defective. The second (App. #1, Doc. 71) takes exception to some *'lex non scripta'* not being read into the first, a rejection of arguments that is considerably less than explicit. What rejection of arguments? The original order (App. #2, Doc. 62) refers only to the amended complaint, not to any objection Wendt made to dismissal. In particular one would never know Wendt said anything about *Rooker Feldman,* the stated basis of dismissal. Is Wendt supposed to take the ignoring of his arguments as a rejection? If the arguments are simply ignored, why not repeat them? Plaintiff has long been familiar with Ill. Sup. Ct. Rule 367, that petitions for rehearing are to direct the court's attention to points that have been overlooked or misapprehended. The second order cites authority on the requirements for a motion to alter or amend, as if Wendt has not been grossly misunderstood, as if a party has no recourse if his side of the case is simply ignored. Where some glimmer of Wendt's case peeks through, *'The injury of which plaintiff complains- no fair hearing and lack of a state court decision- stems directly from the state court's decision to dismiss plaintiff's state court complaint,'* it runs into an irrebutable presumption of state court validity. The state court proceedings qualify as judicial because *'The state court*

engaged in judicial action when it dismissed plaintiff's state court complaint because plaintiff failed to allege sufficient facts to state a claim. The state court also found that dismissal was proper because of his own admission of lack of wrongdoing by defendants,' with no supporting citation. That is all a state court decision needs to say? Is the judicial process to be damned by faint definition? Does it deserve no better than, *'I know it when I see it'* (Stewart, concurring, Jacobellis v. Ohio, 378 U.S. 184, 197)? Here it is the court that is denigrating the judicial process, not the pro se plaintiff. Is this the lawyer joke to end all lawyer jokes? Do the federal courts really expect no more than that of the judicial process itself? If not, why should anyone else take it any more seriously? If Wendt recalls correctly, Vince Lombardi told the Green Bay Packers at their height that they had to practice as hard as ever, that they could not just throw their shirts out on the field and win football games. That seems to be nevertheless an all too common attitude in legal circles and particularly in this case. And, per first order, is Wendt supposed to *'accept defeat'* on no more than that, as if he were a whimpering puppy dog fawning for a pat on the head?"

18. The brief went on to complain of trial court orders based on inappropriate authority not dealing with a challenge to the validity of a stage court judgment. It repeated ignored trial court argument based on the actual language of Rooker and Feldman, the point being the state court proceedings were nonjudicial in not applying law to fact. An argument taking six pages asserted federal jurisdiction over closed state courts under Reconstruction statutes, citing Congressional intent. A final argument on "vexatious" relitigation cited Vasquez v. Hillery, 474 U.S. 254, 265-266. Charles Rembar, The Law of the Land: The Evolution of Our Legal System, and Blackstone (the *stare decisis* trilogy) on the role of *stare decisis* in limiting judicial discretion, that being meaningless when courts simply ignore binding authority.

19. The respondents filed a joint brief on February 14, 2000. It also argued res judicata, state not a person, and statute of limitations, as well as sovereign, judicial, prosecutorial and legislative immunites, by its own statement, should *Rooker Feldman* fail.

20. Wendt moved on February 16, 2000 for an exension of time and pages to file a reply brief on issues precious few lawyers would deal with and for production of state court documents for sua sponte consideration of jurisdictional matters, also asking whether he should ad-dress whether 42 USC 1981 required an allegation of racial discrimination and other defenses. The motion was denied.

21. Wendt filed a reply brief on February 28, 2000 addressing the other side's failure again to address *Rooker Feldman* relating to the validity of a state court case and the other side's additional issues.

22. On May 4, 2000 the appellate panel, consisting of defendants Easterbrook, Bauer, and Ripple, issued a four page unpublished order, without oral argument. It still ignored the previously ignored sections of Rooker and Feldman, made hypothetical comments about res judicata and the Eleventh Amendment, as if the requirements cited in the reply brief did not exist denigrated Wendt's "long-winded narrative assault" on state court judgments, and twice approved of the trial court "rejecting" an unmentioned argument. It quoted Ritter v. Ross, 992 F.2d 750, 753 (7th Cir. 1993), witbout further authority, *"a plaintiff may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action,"* slamming the courthouse door whether there is a civil rights violation or not.

23. On May 18, 2000 Wendt filed a petition for rehearing en banc, addressed to the entire 7th Circuit bench, taking severe exception to "Rooker Feldman doctrine" that prohibits inquiry into state court decisions, and to ultra vires action by the court, under the topics, Is a Hypothetical Jurisdictional Bar any Jurisdictional Bar? / Can a Different Statute (or Two) Confer Jurisdiction? / Do *Sub-Rooker* Decisions

Endanger the Rule of Law? / Does Res Judicata Have Requirements? / Are Immunities a One-Way Street? / Does Failure to Answer Questions Attack the Judicial System? / What Ever Happened to *STARE DECISIS*? / How Much "Raw Judicial Power," Anyway? / "Prayer" to Civil Courts? / If Judges Do Not Apply the Law, Who Will? / Why Brief Rooker Feldman Cases if Dismissal is Automatic? / and Miscellaneous. After yet again repeating the still ignored sections of Rooker and Feldman, the petition concluded an objection to the hypothetical jurisdictional bar with the following:

"16. In any event, there is not the slightest hint in the panel order that the state court decisions comply with Rooker, even with Ritter, in that there was 1) an exercise of jurisdiction, 2) a full and fair hearing, and 3) a ruling re-sponsive to the issues, nor the slightest hint of compliance with Feldman, in that law was applied to facts and the decision had merits. Under these circumstances, plus the following jurisdictional reassertion, McCarthy v. Madigan, 503 U.S. 140, 146, is already an 'ostrich instruction' of sorts:

'*...federal courts are vested with a 'virtually unflagging obligation' to exercise the jurisdiction given them. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817-818, 96 SCt 1236, 1246-1247, 47 LEd 483 (1976) 'We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given.' Cohens v. Virginia, 6 Wheat 264, 404, 5 LEd 257 (1821)*'

"17. Likewise, while turning a real case into a hypothetical case is a little explored point of law, Steel Co. v. Citizens for a Better Environment, 118 SCt 1003, 1016, still might produce an ostrich instruction of its own:

'*... Hypothetical jurisdiction produces nothing more than a hypothetical judgment- which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning. Muskrat v. United States, 219 U.S. 346, 361, 31 SCt 250, 55 LEd 246 (1911); Hayburn's Case, 2 Dall. 409 (1792)... For a court to pronounce upon the meaning or the constitutionality of a state or federal*

law when it has no jurisdiction is, by very definition, for a court to act ultra vires.'

"18. Who knows, the questions, **'Whether lower federal courts can create an hypothetical jurisdictional bar by misreading Rooker Feldman and other authorities,'** or, **'Whether for a court NOT to pronounce upon a constitutional question when it has jurisdiction is, by very definition, for a court to act ultra vires,'** or, **'Whether for even this Supreme Court of the United States to leave the lower federal holdings uncorrected would be to act ultra vires as well,'** might just produce an ostrich instruction from the Supreme Court in this case. What will they call it then, *Rooker Feldman Wendt?*

"19. In any event, Wendt finds it vexatious merely to anticipate a similar suit against the defendants, opposing counsel, and federal judges in this case, but what if that is what it takes to get a point across? If it ever comes to that, however, it certainly will not be without warning. The reply brief, pp14-15, ¶¶49, 52, did not cite Federalist 51 and Locke, 2d Treatise of Government, ¶176, as a rhetorical flourish. Add to those Luke 18, 1-8."

24. On May 31, 2000 defendants Easterbrook, Bauer, and Ripple denied a "petition for rehearing" and the motions without explanation or mentioning the en banc request, defendants Posner, Rovner, Williams, Coffey, Kanne, Wood, Evans, Manion, and Flaum commiting an overt act of silence in failing to respond.

25. On June 8, 2000 Wendt filed a motion to vacate or at least correct the order, or at least thought he did, again arguing ultra vires action, also arbitrary denial of en banc consideration. He also addressed a letter to the Chief Judge regarding en banc consideration. The next day Wendt received the mandate in the mail and on June 12, 2000 received the unfiled motion and a letter in the mail, with a note that only a motion to recall the mandate would be considered. On June 13, 2000 he filed a motion to recall and stay the mandate, appending the previous unfiled motion as reasons. On July 10, 2000 it was denied without explanation.

26. Wendt filed a petition for certiorari in the Supreme Court of the United States on August 28, 2000, docketed August 30, 2000, No. 00-325. It argued certiorari was mandatory because of the unanswered jurisdictional questions and the hypothetical jurisdictional bar. The petition contained the following issue and supporting argument:

"1) Whether lower federal courts can 'reject' an argument, based upon actual language of Supreme Court decisions and legislative intent, without answering or even mentioning it, without also abandoning any notion of binding authority, stare decisis, due process, judicial responsibility, or peaceful redress of grievance, without also reducing judicial relief to a political favor and the grand Anglo-American legal edifice to a bunch of crooks taking care of each other; whether 'judge nullification' is an open invitation to jury nullification."

'REJECTING' AN UNMENTIONED ARGUMENT

"22) Is there still any such thing as binding authority in the federal courts, if courts can simply 'reject' an argument without even mentioning, much less rebutting it? No matter its quotations of Supreme Court decisions and legislative intent regarding constitutional protections? Is there, then, still a right to sue that means anything more than a right to howl at the moon? Has Dred Scott v. Sandford, 60 U.S. (19 How.) 393, been resurrected in reverse, if there is no right to sue, there are no rights that need to be respected? What about Marbury v. Madison, 1 Cranch. 137, 177, 178-179, that if the courts do not rule on constitutional questions, there is no constitution? If a witness' refusal to answer questions is an attack on the judicial system, then what is a judicial refusal to answer questions? Is a lawsuit anything more than a quest for the judges' favor, if it can be dismissed on *'lex non scripta,'* as in this matter? Originally posed about state court proceedings, these questions now have to be asked of the federal court decisions as well.

"23) The appellate order of May 4, 2000, 1a-4a, presumes to uphold the trial court dismissal without

even mentioning, much less addressing, Wendt's arguments that *Rooker Feldman* is not an automatic jurisdictional bar, certainly not in the present circumstances, and that the Civil Rights Acts of 1866 and 1871 confered jurisdiction. It even approved, not once but twice, of the trial court having done this already. The argument is simply disregarded as *'a long-winded narrative assault'* on the state court judgments. There is no hint of it beyond the furtive, ambiguous reference to *'the state courts' refusal to address his case on the merits.'*

"24) Both federal courts simply stonewall Rooker and Feldman away, the appellate court Congressional intent as well. After two trial court orders and two appellate orders one might gather that these passages have gone down some wormhole in space time, that they are as far removed from normal discourse as the Roswell crash or the face in Cydonia. An Arizona attorney on late night radio, suing for government records on black triangle UFOs, seems to be having an easier time than Wendt in getting an application of these quite obvious passages, ¶¶29-42, to quite undisputable facts, already in the record, 14a-18a. To simply ignore binding authority is nothing but *'...a mere illegal fiating,'* Manufacturers Record Pub. Co. v. Lauer, 268 F.2d 187, 191, or an exercise of *'raw judicial power,'* White, dissenting, Roe v. Wade, 410 U.S. 113, 222.

"25) What do stare decisis and binding authority mean if courts can simply ignore and 'reject' plainly cited higher authority? The doctrine of *stare decisis* exists in large part to limit the 'proclivities' of individuals and thus bolster the integrity of the court. Vasquez v. Hillery, 474 U.S. 254, 265-266. Likewise, Charles Rembar, The Law of the Land, p53, said stare decisis is an anti-corruption device, that binding courts by external rules makes favoritism awkward. *'A system in which he was bound only to achieve a 'just result' would be a breeze for the crooked judge. There are considerations, he would tell you, that are not immediately apparent; one must not be too technical.'* In Blackstone's Commentaries, Vol. I, p69, *stare decisis* bound the courts by a perma-

nent rule,'*being sworn to determine, not accor-ding to his private judgment, ...not delegated to pro-nounce a new law, but to maintain and expound the old one...*'

"26) What, then, in this case, so far, cannot be simply ascribed to 'proclivities'? If the respondents, their counsel, and both federal courts were indeed a bunch of crooks conspiring to flim-flam Wendt's case out of court, what would they do any differently in public than what they have already? What is there anything in any of their pleadings or rulings that would inhibit the 'proclivities' of a little inside crowd to run presumably public processes as private fiefdoms?

"27) The 'ostrich instruction' case, United States v. Ramsey, 785 F.2d 184, that criminal intent can be inferred from deliberate disregard, applies to the utter hypocrites and ostriches of the appellate panel. While, on the one hand, their order is based upon stifling inquiry into a state court decision, never mind the actual language of Rooker and Feldman, on the other hand, Ramsey at 189, issued by two members of the very same panel, one the author, said inquiry into relevant considerations is essential, that '*...we call the omission to investigate criminal recklessness...*'

"28) Sparf v. United States, 156 U.S. 51, concluded at 107 that if judges are obliged to publicly give reasons for their decisions, there is little danger of injustice in requiring juries to apply the law as given by the judge. But if the courts do not give their reasons and thus decide cases arbitrarily, without the proper consideration demanded by due process of law, then where is the protection against oppression? Or anything else? Furthermore, if the judges do not apply the law, in particular when their brethren are being sued, then why should jurors take it any more seriously when their simpaticoes are in the dock?"

27. The petition for certiorari was denied withoiut explanation on October 30, 2000 by defendants Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer, leaving the jurisdictional ques-

tions unanswered and the hypothetical jurisdictional bar in place.

28. The reply brief appended an article from a recent UIC publication about its plans for Maxwell St., in-cluding assets purchased with the appropriation in ques-tion, without the slightest reference to Wendt's litigation. The petition for rehearing en banc noted major construction activity on these assets. UIC has since opened an office for sales of residences located on these assets, never mind that Wendt's litigation could require their reversal. At this writing the project has "progressed" with almost complete demolition of the previous neighborhood and rapid, ongoing construction of something quite alien.

29. At no time did defendants Holderman, Easterbrook, Bauer, Ripple, Posner, Rovner, Williams, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer, in issuing their purported rulings in Wendt v. University of Illinois, et. al., or failing to object to them, perform their judicial function of saying what the law is and applying law to fact beyond a selective, capricious, arbitrary, meaningless sham, nor did they ever address the issue of the authority of the court to ignore plainly cited authority, nor did they ever exercise their power or discharge their duty under Article III, §2 to make a jurisdictional determination that applied the missing, undisputed portions of Rooker and Feldman relating to the validity of state court judgments to the undisputed facts in the record presented to them, nor did they respond to Wendt's jurisdictional assertions under the Civil Rights Acts of 1866 and 1871, or nor did they respond to Wendt's numerous, repeated objections on those points, leaving in place after all appeals were finished, an hypothetical jurisdictional bar, when proper exercise of power and discharge of duty would have likely required a different result in the matter, one favorable to Wendt, and one that would have halted irreversible damage to an historic neighborhood.

30. Defendants Holderman, Easterbrook, Bauer, Ripple, Posner, Rovner, Williams, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer left the case undecided, deprived Wendt of his right to an exercise of the judicial power under Article III, Section 2 of the United States Constitution, suspended the Constitution, nullified the law, threw the case by ignoring an unfavored party's best argument, and engaged in a legislative act instead, clearly beyond their judicial power.

Count II

31. Wendt repeats ¶¶ 1-4, 6-29.

32. Defendants Holderman, Easterbrook, Bauer, Ripple, Posner, Rovner, Williams, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer deprived Wendt of his rights to his day in court and to be heard under the Due Process clause of the Fifth Amendment, thus committing a usurpation of judicial power, per Galpin v. Page,18 Wall.(U.S.)350,368-369,21 L.Ed.959.

Count III

33. Wendt repeats ¶¶ 1-4, 6-29.

34. Defendants Holderman, Easterbrook, Bauer, Ripple, Posner, Rovner, Williams, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer deprived Wendt of his rights to sue, be a party, and enjoy the benefits of laws and proceedings for the protection of property under the Thirteenth Amendment, as elaborated by the Civil Rights Acts of 1866 and 1870, and inflicted upon him badges and incidents of slavery.

Count IV

35. Wendt repeats ¶¶ 1-4, 6-29.

36. Defendants Holderman, Easterbrook, Bauer, Ripple, Posner, Rovner, Williams, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer deprived Wendt of his fundamental constitutional right of access to the courts, which means more than simply

presenting a paper subject to dismissal for convenience of court and litigants.

Count V

37. Wendt repeats ¶¶ 1-6.

38. On January 28, 2000 Wendt filed a complaint in the Federal District Court for the Northern District of Illinois, Eastern Division, No. 00 cv 577, against then United States Secretary of Transportation Rodney Slater, alleging, first, the federal program for funding public transportation projects is beyond the power of Art. I, §8 of the United States Constitution, in violation of the specific prohibition of United States v. Butler, 297 U.S. 1, and, second, that piecemeal reconstruction of public transportation systems without analysis of alternatives violates the purpose of 42 United States Code 4332 (National Environmental Policy Act, or NEPA), informed decision making. The jurisdiction of the trial court was invoked under 28 United States Code 1331, 28 USC 1361, and 5 USC 701. It described an ignored monorail technology that could provide considerably more transportation at considerably less financial and environmental cost than the currently used technologies being replaced in kind.

39. The government moved to dismiss April 26, 2000, arguing lack of standing for taxpayer action and failure to allege environmental injury. It described a federal program for funding local transit projects, under which local authorities make the principal decisions. It made no attempt to show any analysis of alternative transportation technologies.

40. Wendt moved for disqualification of the judge, defendant Andersen, May 25, 2000 on grounds of former membership in a law firm Wendt sued in the previous case. A briefing schedule was set.

41. Wendt objected to dismissal on June 16, 2000.

42. The government replied to objections on July 7, 2000, largely repeating previous argument, but seeking to restrict Butler to taxes imposed on farmers. Again, it made no attempt to show any analysis of alternatives.

43. Wendt moved for summary judgment on July 21, 2000, citing the government's own description of the federal program for funding local projects, to show the program unconstitutional under Butler, 63-67, and its silence to show a lack of informed decision making.

44. The motion for summary judgment was denied on August 17, 2000 without prejudice. pending a ruling on jurisdictional matters.

45. The motion to dismiss was granted on September 14, 2000, judgment entered September 19. Defendant Andersen dismissed for lack of standing and jurisdiction, holding Wendt had not proven his jurisdictional facts, he could not prove final agency action, and the matter a political question.

46. Wendt moved to alter or amend the judgment October 2, 2000, on grounds he did not have to prove jurisdictional facts in the pleading stage, even if he had out of the other side's pleadings, that there had to be final agency action somewhere along the line, that the quality of urban life is a justiciable issue, and that he cited a specific prohibition on the use of federal funds upon which he could claim standing as a taxpayer. Regarding the function and authority of the court, in addition to quoting most of the passages quoted above, ¶¶23, 26, it said:

"1. Denouncing the other side's briefs as an invitation to abandon the judicial function, in a state appellate court reply brief filed in January 1997 (Wendt v. University of Illinois, et. al., 96-0853), Wendt concluded he could easily see how innocent men wind up on Death Row. The matter is now before the Supreme Court of the United States (00-325), the state court having accepted that invitation, and the lower federal courts presuming to reject an argument without mentioning it. For all the official hand-wringing over innocent people on Death Row, there seems to be precious little realization that this is just the visible tip of the iceberg, the underlying problem, at least in Wendt's estimation, being a sick, inbred, supercilious, self-justifying, endlessly pettifogging, Alice-in-Wonder-land 'legal com-

munity' that ignores or trivializes unwelcome challenges to 'business as usual.' Well trained in the art of arguing both sides of the case, it is just as adept at taking legal smokescreens as cogent, well founded positions. Though far removed from a death sentence in formal legal consideration, the order in this matter entered September 19, 2000 could well turn into a textbook example of how the legal system goes wrong, at least if Wendt has anything to do with it.

"2. In short, the order of September 19, 2000 rejects Wendt's challenge to federal funding of local transit projects on constitutional and environmental grounds, for failure 1) to specify a particularized environmental injury and final agency action, and 2) to show a violation of the taxing and spending power, Art. I, §8. Thus, according to the order, Wendt has no standing and the Court no jurisdiction. It is entered under FRCP 12 (b)(1), FRCP 12 (b)-(6), allowing dismissal only if the plaintiff COULD prove no set of facts that would entitle him to relief. Never mind that the order itself, as well as Slater's position, trumpets a federal statute and program to fund local transit projects, one obviously with important environmental impacts, yet somehow it is impossible for Wendt to specify any final agency action or any other particularization or causality upon which relief can be granted. Never mind, either, Wendt's repeated argument that there is a specific constitutional prohibition against federal funding of local projects, a specific prohibition not unlike that against federal establishment of religion, upon which Flast v. Cohen, 392 U.S. 83, sustained a taxpayers' action.

"3. A nasty 'legal' practice, 'burden-shifting,' has lately come to Wendt's attention in Death Penalty cases. If current discussion generally associates it with tax and discrimination problems, judging by a recent Infotrac search, where it might be innocuous or not, its potential nastiness dates back at least to Luke 11, 46. The order of September 19, 2000 is based upon at least two examples of nasty 'burden-shfting,' first, that Wendt has not proven his jurisdictional facts in the pleading stage,

p4, and, second, the apparent expectation that his legal argument, including rebuttals, is to be contained in the complaint itself, pp2, 5, 6. That, while completely ignoring argument and additional facts in Wendt's subsequent objections to dismissal and motion for summary judgment. Only the government's legal arguments are considered in the order, without the slightest reference to Wendt's position in objections timely filed June 16, 2000 (Document #8), per briefing schedule set in open court May 25, 2000. Unmentioned too, is the motion for summary judgment filed July 21, 2000 (Document #12), denied without prejudice but also without explanation August 17, 2000 (Document #13), but citing jurisdictional facts from the government's own filings. The order complains of matters left unclear in the complaint, but it was issued without oral argument at which Wendt could have been asked to clarify things. This is a denial of due process. Is all this material really supposed to be incorporated in the initial complaint, anticipating all subsequent developments in the case?..."

"16. Even if citing precedent, the order's position that this is a matter for the political branches might be considered a form of 'burden-shifting' as well. What does Wendt have to allege and prove to show that his rights to political recourse has been violated, at least that the political recourse explicitly suggested by the order, is not a viable option? How about South Dakota v. Dole, 483 U.S. 203, holding that Congressional 'blandishments,' conditioning 5% of federal highway funds on state establishment of a federal drinking age, is not impermissable usurpation of state perogative under the 10th and 21st Amendments? See the so far ignored argument in the motion for summary judgment, ¶15, 16. As argued twice in the objection and the motion for summary judgment both,

"'*...Again, as Butler continues at 68, there is no place else for the citizen to urge the law exceeding the limits of granted power, and that if it does, it is the duty of the court to so declare.*'

"17. In Wendt's experience there seems to be some 'lex non scripta' against court consideration of novel legal theories by pro se litigants, at least by him. In the order dismissing this case, entered September 19, 2000, there is not the slightest indication of Wendt's side of the case, except possibly this Freudian slip, p5, *'Among other requirements, Wendt's complaint must challenge the exercise of Congress' authority to tax and spend as provided in Article I, Section 8 of the Constitution. Flast v. Cohen, 392 U.S. 83, 102...'* It might be a Freudian slip because it misstates Flast, which held federal taxpayer suits could only be based on a specific prohibition against federal spending, such as separation of church and state, but not on lack of enumerated power. Wendt did argue, however, in both his objections and motion for summary judgment, in the alternative, that federal spending has to be based on enumerated power, the same as any other federal power."

47. The motion was taken under advisement in open court on October 5, 2000, defendant Andersen acknowledging Wendt had proven his jurisdictional facts in the pleading stage.

48. The motion to alter or amend was denied in open court on October 12, 2000, the matter still held a political question, but a minute order was promised.

49. Wendt moved for relief from purported judgment on April 6, 2001, arguing clerical error, denial of due process for lack of notice, void judgment, disqualification of judge, and overloaded courts due to unconstitutional laws. It also added a motion for recusal the same judge granted in another transportation case. Regarding the function and authority of the court, it quoted from Federalist 17, John Marshall, Joseph Story, Alexis de Tocqueville, and Charles Black on the importance of the judicial function before launching into an attack on slapdash unpublished opinions as an abdication of judicial function when novel questions of law are presented. A further argument objected to such opinions as a denial of due process and judicial malpractice. Citing Anastasoff v. United States, 223 F.3d 898 (2000) and its

authorities on the role of binding precedent in Anglo-American law, based on reason, not fiat, another argument proclaimed no arguable basis for ignoring previously cited authorities and a regression to Nazi-style determination of legal questions. The final argument blamed the case overload on the failure of the federal courts to strike down unconstitutional laws.

50. The motion for relief and recusal was denied in open court May 3, 2001, defendant Andersen still holding the matter a political question and being unresponsive to Wendt's allegation of ultra vires action and threat of lawsuit.

51. The notice of appeal was filed on June 28, 2001 in the 7th Circuit Court of Appeals, No. 01-2709.

52. On July 20, 2001, Wendt filed motions for remand under Circuit Rule 50 for failure to give reasons, to disqualify 7th Circuit judges for ultra vires conduct in Wendt's previous case and to reopen it, and for priority over cases enforcing unconstitutional, overly Hamiltonian laws, adding denial of access to the court to the previous argument, plus a petition for *en banc* consideration. He criticized previous rulings, based on a quotation, as the "Saddam Hussein approach, *'Don't talk to me about the law. The law is anything I write on a scrap of paper.'*"

53. On August 13, 2001 the pleadings were denied without reason given by defendant Bauer.

54. On August 20, 2001 Wendt was issued an order to show cause why he had not filed a brief on time.

55. On September 4, 2001 Wendt filed a response, largely that his motions were still pending when the brief was originally due.

56. On September 6, 2001 the court set a briefing schedule.

57. On October 9, 2001 Wendt filed his brief seeking summary judgment on the constitutional issues, rebutting the "political question" holding on grounds of federal funding of local projects debasing the political process, sundry legal matters, and selective binding authority as an abandonment of judicial process. Before

citing again Federalist 17, John Marshall, Joseph Story, Alexis de Tocqueville, and Charles Black on the importance of the judicial function, and a regression to Nazi-style determination of legal questions, this last argument said, in pertinent part:

"63. There was a national scandal in the mid-1990's when the head of a fundamentalist denomination declared that God does not hear the prayer of a Jew. Perhaps Wendt has to await a national uproar before the federal courts hear the 'prayer' of a pro se litigant, at least one that presents novel challenge to established practices.

"64. In this case the trial court arbitrarily and capriciously labeled the matter a political question and maintained this position, without further justification, in the face of severe criticism, again with cited binding authority. In the present case the trial court completely ignored U.S. v. Butler, 297 U.S. 1, 63-67, federal funding of local projects is unconstitutional, and Flast v. Cohen, 392 U.S. 83, 102-103, that Butler proclaims a specific prohibition on federal spending upon which taxpayer standing can be maintained. On the environmental issue it ignored Oregon- Environmental Council v. Kunzman, 817 F.2d 484, 492, Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97 (purpose of NEPA), Nucleus of Chicago Homeowners Ass'n v. Lynn, 524 F.2d 225, 229 (quality of urban life is justiciable), U.S. v. SCRAP, 412 U.S 669, 687 (common injury is justiciable), and Florida Audobon Society v. Bentsen, 94 F.3d 658, 669 (DC Cir. en banc, 1996) (chain of causality). It has also ignored numerous citations relating the issues of judicial function and integrity, Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (if there is no right to sue, there are no rights that need to be respected), Marbury v. Madison, 1 Cranch. 137, 177, 178-179 (if the courts do not rule on constitutional questions, there is no constitution), Vasquez v. Hillery, 474 U.S. 254, 265-266 *(stare decisis* limits the 'proclivities' of individual judges and bolsters the integrity of the court), McCarthy v. Madigan, 503 U.S. 140, 146 (federal

jurisdiction given must be exercised as much as that not given declined), and Steel Co. v. Citizens for a Better Environment, 118 SCt 1003, 1016 (exercise of hypothetical jurisdiction is an *ultra vires* act). What should anyone think of a ruling that the trial court does not bother to defend when attacked in open court as *ultra vires* and possible grounds for a lawsuit, the judge having had several political involvements with Congressmen and federally funded agencies? ..."

"65. In capriciously, arbitrarily, and obstinately labeling the matter a political question, the trial court engaged in the practice of selective binding authority, the practice of courts purporting to issue rulings of law, particularly jurisdictional rulings, while altogether failing to mention plainly cited, relevant case law, legislation, and/or legislative intent. It might also be called judge nullification.

"66 The issue is extraordinarily important because selective binding authority or judge nullification reduces the law to a favor granted or withheld by judges, as an alderman would a zoning variance, and reduces the judical process to a seance with some black-robed oracles. In short, it nullifies the law. It makes the law unavailable, or available only by favor of the judges, if that can still be called law. It confers on judges the very discretion that stare decisis is designed to limit. The judicial process is defined as application of law, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 477, Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, not its nullification. What does it take to invoke the law, anyway? Does one have to be an old law school buddy, perhaps? An old political crony? A big corporation? Some sort of influence peddler?

"67. Selective binding authority is no binding authority. If binding authority is the essence of judicial power, then a purported ruling based upon selective binding authority is a legislative act, not a judicial act, and beyond the power of the court. If it did not quite resolve all the problems with unpublished decisions, which in Wendt's experience anyway are rather closely

associated with selective binding authority and judge nullification, Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000), did declare unconstitutional an 8th Circuit rule that unpublished opinions do not have precedential effect, that the rule purported to confer extra-judicial power upon the federal courts. In an elegant and authoritative, yet amazingly concise discussion, it outlines the history and significance of binding precedent in Anglo-American law. To the point here, its rationale also puts it beyond judicial power to ignore and nullify binding precedent..."

"69. The issue is extraordinarily important because selective binding authority. or judge nullification, reduces the right to sue to a right to howl at the moon and all other rights to favors from the bench. It reduces the resolution of grievances to the selection of favorites. The right to sue is the right to protect all other rights..."

"70. The importance of this issue can be guaged by court holdings on jury nullification. Although juries have an admitted, unreviewable power to nullify the law, U.S. v. Moylan, 417 F.2d 1002, 1006, at least one jury has been instructed that its exercise is a violation of a sworn duty, the instruction upheld on appeal, U.S. v. Krzyske, 836 F.2d 1013, 1021. Furthermore,'... *exercise of such power is in dereliction of the jury's sworn* duty.' U.S. v. Funches, 135 F.3d 1405, 1408, original emphasis. If jury nullification can be seen as a back door, safety valve of sorts, Moylan, Gregg v. Furman, 428 U.S. 153, 199 n50, U.S. v. Datcher, 830 F.Supp. 411, no such view can be taken of judge nullification without undermining the essence of judicial power in the Anglo-American tradition. It is bad enough that trials should be a *'roll of the dice,'* U.S. v. Ruiz, 47 F.3d 452, 455 (1st Cir. 1995); U.S. v. Graves, 98 F. 3d 258, 260 (7th Cir. 1996), perhaps unavoidably due to the subjective nature of fact-finding, but we should really expect more of the more objective rule-determining process. If a constitutional issue gets lost in the rush of selective binding authority or judge nullification, then the constitution is suspended, per Marbury.

"72. Deprivation of the right to sue is a badge and incident of slavery; slaves had no right to sue. This practice was outlawed by the 13th Amendment and the Civil Rights Act of 1866. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441, 88 S.Ct. 2186, 20 LEd 2d 1189, construing §1 of 1866 Civil Rights Act, held,

*"For this Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery- its 'burdens and disabilities'- included restraints upon 'those fundamental rights which are the essence of civil freedom, namely, the same right * * * to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.' Civil Rights Cases, 109 U.S. 3, 22 "*

(note)*"... we note that the entire Court agreed upon at least one proposition: The Thirteenth Amendment authorizes Congress not only to outlaw all forms of slavery and involuntary servitude but also to eradicate the last vestiges and incidents of a society half slave and half free, by securing to all citizens of every race and color, 'the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.' Civil Rights Cases, 109 U.S. 3, 22"*

58. On November 7, 2001 the government, by defendants Fitzgerald and Brooks, filed a motion for summary affirmance, naming the new Secretary of Transportation, Norman Mineta, as defendant, on grounds Wendt could not attack the underlying judgment on a denial of an FRCP 60 motion. Although acknowledging substantive legal issues in the brief, relating to the original issues and to the validity of the underlying decision, it said,

"9. On October 9, 2001, more than one year after the district court's dismissal of his complaint, Wendt filed an appellate brief contending that: federal funding of local mass transit projects is unconstitutional; he had standing as a taxpayer to challenge federal funding; there is a federal responsibility for informed decision making; the quality of urban life is a justiciable question;

and finally, that the court abandoned the judicial process by failing to address Wendt's citations of allegedly binding authority,"

It completely ignored Wendt's position on a void decision and abandonment of the judicial process. Citing authorities dealing only with challenges to valid decisions under Rule 60, it said Wendt's brief was untimely and concluded, completely misrepresenting Wendt's case, contradicting its own acknowledgement of substantial legal issues, without defending the adequacy of the lower court proceedings, and ominously seeking to stifle legal discussion:

"11. Even read liberally, it is impossible to discern a viable cause of action in Wendt's complaint. Instead, his complaint primarily sought to use the court as a political forum to decry Chicago's mass transit system and advocate implementation of his personally preferred alternative. Similarly, it is impossible to discern a reason to disturb the district court's denial of Wendt's 'Motion for Relief from Purported Judgment' from his appellate brief. *A-Abart Elec. Supply. Inc. v. Emerson Elec. Co.,* 956 F.2d 1399, 1406 (7th Cir. 1992)(summary affirmance is appropriate when the appeal 'merely restates arguments that the district court properly rejected.') Instead Wendt's brief is little more than a rambling diatribe against the judiciary for not accepting his arguments and the federal government for not accepting his proposed mass transit alternatives. It would be difficult to engage in a serious *legal* discussion of the issues. As such, summary affirmance is appropriate."

59. On November 16, 2001 Wendt filed a response offering three separate reasons for rejecting the government's motion. It quoted the final trial court order that the record was complete for appeal and that the trial court did not have time to deal with Wendt's issues, that being for appellate courts. It said the trial court order was challenged as void, both for denial of due process and for a ruling beyond the power of the court, for which there is no time limit. It said, "Mineta's motion is yet again the Saddam Hussein approach, *'Don't talk to me*

about the law. The law is anything I write on a scrap of paper,'" It complained of gross prejudice against pro se litigants, citing a law review article by former 2nd Circuit clerks. It objected to misrepresentations of both the complaint and the original trial court order. Likewise, to a portion of Wendt's criticisms of the legal system (¶13, above) being taken out of context. It recounted the factual basis of the case derived from the government's own pleadings, transcending any defects in the complaint. Cited yet again was the "stare decisis trilogy" on binding authority and the integrity of the court without the slightest response from court or counsel, in both of Wendt's cases. It wondered, if the government had nothing on the table, what it had under the table, such as a coerced court, citing Lord v. Kelley, 240 F. Supp, 167, 169, and State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988)(¶5, above).

60. On November 20, 2001, four days after Wendt's filing, three days before the government's reply was due, defendants Posner, Rovner, and Williams summarily affirmed the trial court order, but still named the previous Secretary as defendant. The decision, an exercise in timidity if ever there was one, did not even set forth the facts of the proceeding, much less the issues, much less apply law to them nor to any substantive issue, or acknowledge any issue regarding the appearance of a coerced court. This is the body of the decision in full:

"The appellee has filed a motion for summary affirmance. This court has carefully reviewed the final order of the district court, the record on appeal, the appellee's motion, and the appellant's response to the motion. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of the issues. *See Taylor v. City of New Albany,* 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein,* 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing or argument).

"Accordingly, **IT IS ORDERED** that the motion for summary affirmance is **GRANTED,** and the judgment of the district court is summarily **AFFIRMED."**

61. On January 3, 2002 Wendt filed a petition for rehearing *en banc* arguing no appellate deliberation, appearance of a coerced court, ignoring of constitutional issues, no day in court, no res judicata, abandonment of judicial immunity, and invitation of scandal. It cited Salve Regina College v. Russell, 499 U.S. 225, 231-233 (1991) at length, to set forth the proper functions and duties of an appellate court. Thus it made the order of November 20 look like a very bad joke, an order giving the government everything it wants, but giving the uninitated absolutely no idea what the case is about, an order based only on "unreflective reliance" and "inarticulable intuitions," contrary to Salve, uncritical and arbitrary at best, craven and supine at worst, with no appearance of justice, per Marshall v. Jerrico, Inc., 446 U.S. 238, 243. Additional authorities were cited on the duty of the courts to decide constitutional questions and to extend due process, raising questions of usurpation. Concluding an argument that judicial immunity only protects judicial acts, to wit, application of law to facts, it said,

"34. Davis v. Passman, 442 U.S. 228, 246, (a Bivens action based on constitutional violation, as would be a lawsuit stemming from this action for violation of Wendt's 13th and 14th Amendments right to sue, brief, pp18-19, ¶¶72-73), set forth some nice theory, if not defeated by more selective binding authority:

"Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law.

"'No man in this country is so high that he is above the law. No officer of the law may set the law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.'"

62. On January 28, 2002 a "motion for reconsideration" was denied by defendants Posner, Rovner, and Williams without reason given, defendants Easterbrook,

Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, and Flaum commiting an overt act by their silence, leaving the jurisdictional questions unanswered and the hypothetical jurisdictional bar in place.

63. On April 26, 2002 Wendt filed a petition for a writ of certiorari in the Supreme Court of the United States, docketed May 2, 2002, No. 00-325. It argued certiorari was mandatory and constructively certified because of unanswered jurisdictional questions. To previous arguments, it added an argument that the purpose of FRCP 60, that judgments reflect the true merits of the case, was utterly defeated, and that Wages v. I.R.S., 915 F.2d 1230, 1234 (9th Cir. 1990), reviewed the underlying judgment questioned as void under Rule 60. It argued that "day in court" had never been defined by the Supreme Court, suggesting Bartlett v. Bowen, 816 F.2d 695, 706-707, (D.C. Cir. 1987), which succinctly described the judiciary's role under the separation of powers doctrine, as close to defining "day in court":

"Since Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803), the Supreme Court has interpreted the Constitution to give to the judiciary an important role in the structure of the government. First, federal courts fulfill their role ONLY by adjudicating cases or controversies before them. Second, when faced with a proper case or controversy, courts, both state and federal, ***must apply all applicable laws in rendering their decisions****. Third, courts have a duty to uphold the Constitution. Fourth, a law contrary to the Constitution may not be enforced. Last, a final judgment by a court is binding and must be enforced...."* (Caps emphasis original, bold added) Painter v. Shalala, 97 F.3d 1351, 1359 (10th Cir. 1996) It also argued the appearance of a coerced court, that judges are disqualified for failing to answer jurisdictional questions, and that the previous case should be reopened for that same failure. It appended the government's motion for summary arffirmance, the response, and the petition for rehearing en banc.

64. On May 30, 2002 defendant Olson waived, without comment, a response to the petition, offering only silence when he had a duty to speak out.

65. On June 24, 2002 the petition was denied without comment by defendants Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer, leaving the jurisdictional questions unanswered and the hypothetical jurisdictional bar in place.

66. Defendants Andersen, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer, either in issuing their purported rulings in Wendt v. Slater/Mineta, or failing to object to them, failed to perform their judicial function of saying what the law is and applying law to fact beyond a selective, capricious, arbitrary, meaningless sham, nor did they ever address the issue of the authority of the court to ignore plainly cited authority, nor did they ever exercise their power or discharge their duty under Article III, §2 to make a jurisdictional determination that applied the ignored decisions, including a Constitutional determination, (¶57, above, in quoted ¶64 therein, and others cited subsequently) to the undisputed facts in the record presented to them, nor did they ever respond to Wendt's numerous, repeated jurisdictional assertions and objections, all showing the matter a judicial, not a political, question, while they held the matter nonjusticiable, expressly or by silence, without first interpreting the text in question and determining whether and to what extent the issue is textually committed, leaving in place, after all the appeals were finished, an hypothetical jurisdictional bar, when proper exercise of power and discharge of duty would have likely required a different result in the matter, one of profound constitutional proportions regarding public facilities, finance and processes, and one favorable to Wendt.

67. Defendants Andersen, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor,

Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer failed to decide the case, deprived Wendt of his right to an exercise of the judicial power under Article III, Section 2, suspended the Constitution, nullified the law, threw the case by ignoring an unfavored party's best argument, and engaged in a legislative act instead, clearly beyond their judicial power.

Count VI

68. Wendt repeats ¶¶ 1-4, 6, 37-66.

69. Defendants Andersen, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer deprived Wendt of his right to his day in court and right to be heard under the Due Process clause of the Fifth Amendment, committing a usurpation of judicial power, per Galpin v. Page, 18 Wall. (U.S.) 350, 368-369, 21 L.Ed. 959.

Count VII

70. Wendt repeats ¶¶ 1-4, 6, 37-66.

71. Defendants Andersen, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer deprived Wendt of his rights to sue, be a party, and enjoy the benefits of laws and proceedings for the protection of property under the Thirteenth Amendment, as enforced by the Civil Rights Acts of 1866 and 1870, and inflicted upon him badges and incidents of slavery.

Count VIII

72. Wendt repeats ¶¶ 1-4, 6, 37-66.

73, Defendants Andersen, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer deprived Wendt of his fundamental constitutional right of access to the courts which means more than simply presenting a paper subject to dismissal for convenience of court and litigants.

Count IX

74. Wendt repeats ¶¶ 1-6, 37-66.

75. Defendants Brooks and Fitzgerald, in their Motion for Summary Affirmance, with a selective, inapposite, contradictory, mendacious, grossly prejudicial, clearly untenable argument, with a thinly veiled threat that no serious legal discussion was possible, possessing a coercive power to initiate prosecutions, in violation of prosecutorial responsibilities, reached a meeting of the minds with defendants Posner, Rovner, and Williams to slam the courthouse door on Wendt's appeal, without legal ground and normal discharge of appellate duties, the overt act committed in the form of the timid, compliant, nonfactual, and nonreasoning court order of November 16, 2001, and with the subsequent overt acts of silence by defendants Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Olson, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer, conspired to deprive Wendt of a decision in the matter and of his rights to an application of the Constitution and an exercise of the judicial power under Article III, Section 2, and to engage instead in a legislative act, clearly beyond their judicial or prosecutorial power, that without any appearance of an independent, life-tenured judiciary under Article III, Section 1.

Count X

76. Wendt repeats ¶¶ 1-6, 37-66, 75.

77. Defendants Brooks, Fitzgerald, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Olson, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer also conspired to deprive Wendt of his rights to his day in court and to be heard under the Due Process clause of the Fifth Amendment, jointly commiting a usurpation of judicial power, per Galpin v. Page, 18 Wall. (U.S.) 350, 368-369, 21 L.Ed. 959.

Count XI

78. Wendt repeats ¶¶ 1-6, 37-66, 75.

79. Defendants Brooks, Fitzgerald, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Olson, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer, also conspired to deprive Wendt of his rights to sue, be a party, and enjoy the benefits of laws and proceedings for the protection of property under the Thirteenth Amendment, as enforced by the Civil Rights Acts of 1866 and 1870, and inflicted upon him badges and incidents of slavery.

Count XII

80. Wendt repeats ¶¶ 1-6, 37-66, 75.

81. Defendants Brooks, Fitzgerald, Posner, Rovner, Williams, Easterbrook, Bauer, Ripple, Coffey, Kanne, Wood, Evans, Manion, Flaum, Olson, Rehnquist, Stevens, O'Connor, Kennedy, Scalia, Thomas, Souter, Ginsburg, and Breyer also conspired to deprive Wendt of his fundamental constitutional right of access to the courts, which means more than simply presenting a paper subject to dismissal for convenience of court and litigants.

Relief Requested

1. Declarations that the final rulings in Wendt v. Univ. of Illinois, et. al. and Wendt v. Slater/Mineta are clearly beyond judicial authority and are thus null and void (upon notification of the opposing parties in both cases, if necessary).

2. Reopening of Wendt v. Univ. of Illinois, et. al. and Wendt v. Mineta for the purpose of issuing responsive rulings within judicial authority, whether by injunction, mandamus, or sua sponte action (again, with opposng parties properly notified, perhaps by an interlocutory order).

3. Compensatory and punitive damages as appropriate, including damages that can no longer be assessed against defendants in Wendt v. Univ. of Illinois, et. al., because of death or inability to locate, and because of irreparable damage that has occurred to the subject matter of that case since its purported rulings.

4. Assistance to the plaintiff, at defendants' expense, investigative and otherwise, in prosecuting Wendt v. Univ. of Illinois, et. al., as may be necessary.

Wherefore William F. Wendt, Jr., plaintiff, pro se, complains of the defendants and seeks the requested relief.

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